

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

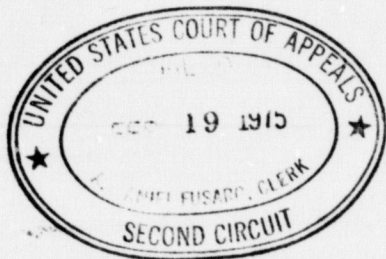
74-2493
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 74-2493

UNITED STATES OF AMERICA
PLAINTIFF-APPELLEE
VS.
JAMES HASKINS
DEFENDANT-APPELLANT

BRIEF OF DEFENDANT - APPELLANT
JAMES HASKINS
WITH APPENDIX



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VS.

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BRIEF OF DEFENDANT - APPELLANT

STATEMENT OF THE CASE

The defendant James Haskins, with co-defendants Harold Simmons and Michael Alston, was charged with a bank robbery in a single indictment filed July 20, 1974, charging the usual three counts of bank robbery plus a fourth count alleging conspiracy to do the same.

All three defendants stood mute at the time of plea and not guilty pleas were entered on their behalf. All three were represented by appointed counsel. The usual pre-trial motions were filed.

The three defendants, all of whom are black, moved to stay the proceedings, to strike the jury panel and for a supplemental order concerning the selection of prospective petit jurors. This motion, based upon an applicable record in another case on the same jury list, United States v. Louis Gonzalez, was denied.

On September 9, 1974, a jury trial commenced before Judge Newman. Subsequent to jury selection and prior to the taking of evidence, the defendant Simmons moved to represent himself pro se. This motion was granted. During trial, the defendants Haskins and Alston at various times moved to sever their trial from that of the defendant Simmons and for a mistrial because of interaction between Judge Newman and the defendant Simmons. All such motions were denied. The defendants Haskins and Alston also moved that the order of cross-examination of Government witnesses be so arranged that the defendant Simmons not be the last to cross-examine. These motions also were denied. Near the end of the Government's evidence, the defendant Simmons lost his right of pro se representation.

On October 23, 1974, the jury returned a verdict on Counts I, II and III of the Indictment, the conspiracy count having been withdrawn from jury consideration. On November 13, 1974, each defendant was sentenced to 25 years imprisonment.

PRELIMINARY STATEMENT REGARDING ISSUES
ON APPEAL BRIEFED BY CO-DEFENDANTS

In an effort to minimize time and expense in the preparation and presentation of this appeal, counsel for the defendants have apportioned among themselves responsibility for briefing and arguing issues common to all the defendants.

Accordingly, the defendant-appellant James Haskins respectfully asks the benefit of the briefs and appendices to briefs of the co-defendants Harold Simmons and Michael Alston.

STATUTES AND RULES INVOLVED

18 U.S.C. §2113. Bank Robbery and Incidental Crimes.

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

. . . .

(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding \$100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

. . . .

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than \$10,000 or imprisoned not more than twenty-five years, or both.

Rule 14, Federal Rules of Criminal Procedure. Relief from
Prejudicial Joinder.

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. ...

QUESTION PRESENTED

1. Did The District Court Err In Denying Defendant's
Motions To Sever Defendants, Motions For Mistrial,
And Motions Respecting The Order Of Cross-Examination
Of Government Witnesses?

THE FACTS

The court granted Harold Simmons permission to represent himself on September 30, following jury selection but before presentation of evidence began. (App. p. 4) Subsequent to this ruling, but before the taking of evidence had begun, counsel for the defendants Haskins and Alston alerted the court to their concern that unlimited pro se representation by Mr. Simmons might jeopardize their clients' right to a fair trial. They attempted both to secure a more active rule for Mr. Simmons' stand-by counsel and, when these efforts appeared unavailing, to advise Mr. Simmons themselves. (App. pp. 11 - 14)

No point would be served by repeating here the numerous instances during trial in which Mr. Simmons, in the presence of the jury, became involved in heated and highly incriminating arguments with Judge Newman during his efforts to cross-examine Government witnesses. Eventually these conflicts resulted in his temporary exclusion from the courtroom and termination of his right of pro se representation. (App. pp. 168 - 170)

Similarly, the Appendix to this brief discloses countless examples of pro se cross-examination by Mr. Simmons in which both specific questions and general lines of questioning were highly incriminating of himself and his co-defendants. At various points during the trial, because of these events, counsel for co-defendants Haskins and Alston moved to sever their clients' trials from that of Mr. Simmons and for mistrials as to their clients. All such motions were denied. (App. pp. 5-7, 88-89, 145-46, 172)

As it became increasingly apparent that severance would not be granted, counsel for defendants Haskins and Alston attempted in various ways to salvage their clients' position by coordinating their defense with that of Mr. Simmons in a manner designed to minimize conflict and reduce the incriminating effect of his pro se efforts.

During the preliminary motion stage of this case, while Mr. Simmons was still being represented by counsel, it had become the practice that his attorney was the last to cross-examine Government witnesses. When presentation of evidence began, counsel for the defendants Haskins and

Alston moved that cross-examination be conducted by defendants in the order they were listed in the Indictment -- the effect being that Mr. Simmons would cross-examine first rather than last. Counsel expressed the hope that such a procedure would enable them to minimize any damage to their clients which Mr. Simmons might inadvertently inflict. These motions were denied on the ground that it would be unfair to require a pro se defendant to cross-examine first. (App. pp. 82 - 84)

Counsel for Mr. Haskins and Mr. Alston then moved that they be permitted to "sandwich" the cross-examination of Mr. Simmons -- one attorney preceding him and one attorney following him. Mr. Simmons joined in this request. These motions, too, were denied but without any clear statement of reasons. (App. pp. 85 - 91)

A R G U M E N T

I

ON THE FACTS OF THIS CASE, IN WHICH A CO-DEFENDANT REPRESENTED HIMSELF, THE COURT ABUSED ITS DISCRETION AND DENIED THE DEFENDANT HASKINS A FAIR TRIAL BY BOTH DENYING HIS MOTIONS FOR SEVERANCE AND MISTRIAL AND REQUIRING THAT THE PRO SE DEFENDANT BE THE LAST TO CROSS-EXAMINE GOVERNMENT WITNESSES.

The defendant is well aware of the general rule that the granting or denial of relief under Rule 14 falls within the discretion of the trial court and will not be reversed upon appeal absent clear prejudice to the appellant. Compare, e.g., United States v. Haupt, 136 F.2d 661, 672-73 (7th Cir. 1943), with United States v. Jenkins, 496 F.2d 57, 67-68 (2d Cir. 1974); United States v. Projansky, 465 F.2d 123, 138 (2d Cir.), cert. denied 409 U.S. 1006, 93 S. Ct. 432 (1972); United States v. Postma, 242 F.2d 488, 493 (2d Cir. 1957); United States v. Lebron, 222 F.2d 531, 535 (2d Cir. 1955); Chase v. United States, 468 F.2d 141, 143 (7th Cir. 1972); McDonald

v. United States, 89 F.2d 128, 136-37 (8th Cir.), cert. denied 301 U.S. 697, 57 S. Ct. 925, 81 L. Ed. 1352 (1937); Brown v. United States, 126 U.S. App. D.C. 134, 375 F.2d 310, 316 (1966), cert. denied 388 U.S. 915, 87 S. Ct. 2133, 18 L. Ed. 2d 1359 (1967). It has never been questioned, however, that defendants may not be tried jointly if such a trial is fundamentally unfair to any of them. See, e.g., United States v. Echeles, 352 F.2d 892 (7th Cir. 1965).

As the right of pro se representation gains increasing acceptance, see, e.g., United States v. Plattner, 330 F.2d 271 (2d Cir. 1964), it is essential that trial courts become more imaginative than they have been in fashioning protections for both the pro se defendant and the counselled co-defendant. The traditional response of appellate courts in this area of the law, which usually consists of leaving trial judges to their own devices without any meaningful standards to guide them, has had the obvious effect of encouraging judges at the trial level to deny Rule 14 motions in almost every case, regardless of the facts, without any real effort to devise reasonable solutions to the genuine problems which defendants face in multi-defendant trials. The increasing frequency of multi-defendant trials in which one or more defendants appear pro se -- especially cases, such as this, with political overtones -- demands a greater measure of

creativity at the trial level than has heretofore been observed. Such creativity will not soon appear unless appellate courts are willing to undertake a closer examination than they have of the reasonableness of trial court denials of Rule 14 motions.

United States v. Dougherty, 154 U.S. App. D.C. 76, 473 F.2d 1113 (1972), suggests a number of reasonable approaches to the problems which can be created by unruly or unskillful pro se defendants in multi-defendant trials. "In the last analysis, however," the court noted in dicta at page 1126, "if the assertion of a pro se right makes a multi-defendant trial unmanageable, or unfair to the other defendants, the remedy lies in severance."

All the cases in this Circuit refusing to overturn the denial of severance on facts somewhat similar to those in the present case were decided before Dougherty. United States v. Calabro, 467 F.2d 973, 986-88, cert. denied sub nom. Tortorello v. United States, 93 S. Ct. 1357 (1972); United States v. Marshall, 458 F.2d 446, 451-52 (1972); United States v. Bentvena, 319 F.2d 916, 929-32, cert. denied sub nom. Ormento v. United States, 375 U.S. 940, 84 S. Ct. 345, 11 L. Ed. 2d 271 (1963); United States v.

Aviles, 274 F.2d 179, 193, cert. denied sub nom. Genovese v. United States, 362 U.S. 974, 80 S. Ct. 1059, 4 L. Ed. 2d 1010 (1960). More important, however, is the fact that in none of those earlier cases was the trial court given the alternative of remedial measures significantly less drastic than severance.

In the present case, the trial court was given such an alternative and rejected it for no apparent reason. Changing the order of cross-examination to "sandwich" the pro se defendant between his co-defendants' attorneys -- a request in which Mr. Simmons himself joined -- would in no way have inconvenienced anyone involved in this trial; yet it would have significantly reduced the wide-ranging scope of Mr. Simmons' pro se cross-examination, provided upon him a control obviously more likely to be effective than any imposed by the trial judge, given counselled co-defendants an opportunity to mitigate the damaging effect of many of his questions, and minimized the potential for courtroom conflicts between Mr. Simmons and the trial judge which eventually came to dominate the trial. After this motion was denied, severance became the only remaining alternative.

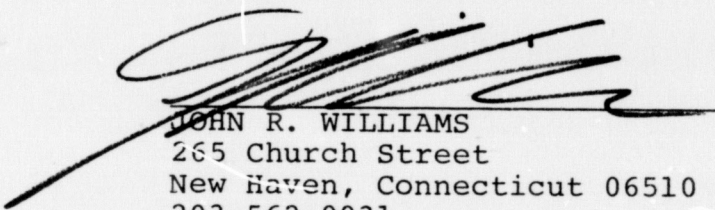
Rule 14 permits the trial court not only to sever defendants but also to "provide whatever other relief justice requires." Of course, the court had the power to change the order of cross-examination even without the benefit of Rule 14. The denial of the motion to "sandwich" the cross-examination of Mr. Simmons was a clear abuse of the trial court's discretion. Indeed, even the trial judge could think of no valid reason for his ruling other than to say he thought it was within his discretion. Obviously, however, judicial discretion is abused whenever exercised on no firmer basis than the mere whim or caprice of the trial judge. In this case, the ruling regarding the order of cross-examination probably caused much of the subsequent trial disruption during Mr. Simmons' cross-examinations and certainly inflicted needless injury and prejudice upon the defendants Haskins and Alston.

As much as anything, it was the court's denial of the motion to "sandwich" Mr. Simmons' cross-examination which made severance necessary. That relief having been necessitated by the court's earlier abuse of discretion, its denial was itself an abuse of discretion.

C O N C L U S I O N

For all of the reasons recited in this brief and in the briefs of both co-defendants, the judgment below should be reversed.

Respectfully submitted:



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DEFENDANT - APPELLANT

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STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation U. S. Code	Docket fee				
Title 18					
Sec. 2113(a), (b), (d); 2(a) & 2(b); 371					

app. 1

DATE	PROCEEDINGS
1974	
6/25	HASKINS: CJA Form 20 appointing John R. Williams, Esq., to represent defendant, filed. Newman, J. Copies distributed.
6/26	SIMMONS: CJA Form D appointing Thomas D. Clifford, Federal Public Defender, to represent defendant, filed and entered. Newman, J. m-6/26/74.
6/28	ALSTON: PLEA: Defendant remains mute. Plea of not guilty entered to Counts 1, 2, 3 and 4 by the Court. Case continued on bond of \$100,000 with surety. Attorney David Rosen appointed guardian ad litem. Standing Order of the Court will apply to this case. Newman, J. m-6/28/74.
6/28	HASKINS: PLEA: Defendant remains mute. Plea of not guilty entered to Counts 1, 2, 3 and 4 by the Court. Case continued on bond of \$100,000.00, with surety. Standing Order of Court will apply to this case. Newman, J. m-6/28/74.
6/28	SIMMONS: PLEA: Defendant remains mute. Plea of not guilty entered to Counts 1, 2, 3 and 4 by the Court. Case continued on bond of \$100,000.00, with surety. Standing Order of Court will apply to this case. Newman, J. m-6/28/74.
7/2	SIMMONS, HASKINS, ALSTON: Motion to Suppress Identification Testimony, Motion to Suppress Statements, and Motion to Suppress Evidence, filed by defendants.
8/6	SIMMONS, HASKINS, ALSTON: Court Reporter's Notes of proceedings held on June 28, 1974 (Pless), filed. Gale, R.
"	SIMMONS, HASKINS, ALSTON: Court Reporter's Sound Recording of proceedings held on June 28, 1974 (Pless), filed. Gale, R.
8/20/	ALSTON: CJA Form 21 authorizing Investigator H. Paul Rinker to interview witnesses, filed. Newman, J. Copies distributed.
8/20	HASKINS: Motion to Prohibit Interference with Attorney-Client Relationship, filed by defendant.
8/28	SIMMONS: Motion to Stay the Proceeding, to Strike the Jury Panel and For a Supplemental Order Concerning the Selection of Prospective Petit Jurors, filed by defendant.
8/30	ALSTON: Motion to Prohibit Interference With Attorney-Client Relationship, filed by defendant.
9/9	HASKINS: Motion to Stay the Proceeding, to Strike the Jury Panel and for a Supplemental Order Concerning the Selection of Prospective Petit Jurors.
9/9	HASKINS: Brief in Support of Motion to Prohibit Interference With Attorney-Client Relationship, filed by defendant.
9/10	HASKINS: Motion for Service of Subpoenas at Government Expense, filed by defendant.
9/10	ALSTON: Motion for Service of Subpoenas at Government Expense, filed by defendant.
9/9	HASKINS: CJA Form 21 authorizing services of Paul Rinker, Investigator, filed. Newman, J. Copies distributed.
9/10	HASKINS: Motion for Service of Subpoenas at Government Expense endorsed as follows: Motion Granted as to Wardens of Community Correctional Centers at Hartford and Brooklyn; denied as to Commissioners Manson and Lopes. Newman, J. m-9/10/74. Copies mailed to counsel.
9/10	ALSTON: Motion for Service of Subpoenas at Government Expense endorsed as follows: Motion Granted. Newman, J. m-9/10/74. Copies mailed to counsel.
9/16	SIMMONS: Motion to Join Co-Defendants' Motions, filed by defendant.
9/13	MOTION to Quash Subpoenas, filed by Assistant Attorney General for State of Connecticut on behalf of John R. Hanson, Commissioner of Corrections.

DATE	PROCEEDINGS
1974	
9/13	Appearance of Stephen J. O'Neill, Assistant Attorney General for the State of Connecticut, filed on 9/13/74 of John R. Manson, Commissioner of Corrections in connection with Motion by defendants Prohibiting Mr. Manson from opening and/or inspecting their mail.
9/13	Objection to Defendants' Motions to Prohibit Interference with Attorney-Client Relationship, filed.
9/13	Marshal's Return Showing Service, filed: 3 subpoenas to testify.
9/18	Hearing held on (1) Defendants' Motions to Suppress and (2) Defendant Haskins' Motion to Prohibit Interference with Attorney-Client Relationship. Court hears argument on Motion of Conn. Corrections Commissioner John R. Manson re alleged mail issue. Agreement reached by the parties and approved by the Court as to delivery of mail to defendants-inmates. Suppression hearing: Four Government witnesses sworn and testified Court Ex. #1 and 2, marked for Ident. Govt. Ex. A and B, marked for Ident. Govt. Ex. A-1, A-2, A-3, C-2, C-2 and C-4, filed. Govt. Ex. C-1, marked for Ident. Deft. Ex. #1, 2 and 3, filed. Newman, J. m-9/19/74. Hearing continued to Monday, Sept. 23, 1974 at 10:30 A.M.
9/19	Motion to Suppress Evidence Derived from Unlawful Electronic Surveillance, filed by all defendants.
9/23	Continued hearing on (1) Defendants' Motion to Suppress and (2) Defendant Haskins' Motion to Prohibit Interference with Attorney-Client Relationship. 3 defendants' witnesses sworn and testified. 4 Government witnesses sworn and testified. Government Exhibits D-1 thru D-4, filed. Government Exhibit B made full exhibit. Court Exhibits 3, 4, 5, 6 and 7 marked for identification. Government Exhibits E, E-1 thru E-12 and F, F-1 thru F-4, marked for identification. Government Exhibits E, E-1 thru E-12 made full exhibits. Defendants move for transcripts of statements of identification witnesses. Decision reserved. Court adjourned at 4:05 P.M. to Tuesday, September 24, 1974, at 2:00 P.M. Newman, J. m-9/24/74.
9/24	SIMMONS, HASKINS, ALSTON: JURY TRIAL COMMENCES: Defendant's (Alston) Proposed Questions on Voir Dire Examination, filed. Defendant's (Simmons) Submission of Voir Dire Questions, filed. Defendant's (Simmons) Motion for An Individual Voir Dire, filed. Joined in by other two defendants. Defendant's (Haskins) Proposed Voir Dire Questions, filed. Court reviews voir dire questions. Motion for Individual Voir Dire, denied. Defendants' joint Motion to Incorporate Gonzalez Record, granted; as to challenge it is denied. Motions to Dismiss, filed by defendants Simmons and Haskins. Defendants' Motion to Introduce themselves to the jury, granted. Court allows Government 8 challenges and defendants 24, including alternates. 3:10 p.m. Jury enters courtroom (67 jurors present). Court introduces attorneys and defendants to panel. Court describes case on trial and jurors interrogated by the court as to their qualifications. 3:55 p.m. Jurors who have heard or read about case return to jury room. Due to number of jurors court allows Government 6 challenges and defendants 18. 4:30 p.m. Remaining 20 jurors leave courtroom and summoned one by one by the court and interrogated. 2 jurors accepted by both sides. 5:00 p.m. Entire jury panel enters courtroom and excused to 10:00 a.m., Sept. 25, 1974. 5:15 p.m. Court adjourned. Newman, J. m-9/25/74.
9/24	On JON's Jury Assignment List. Ready #1. Jury impanelling commenced. Newman, J. m-9/26/74.
9/25	JURY TRIAL CONTINUES: Motion for free transcripts filed by defendant Haskins. Continued jury selection. 65 jurors present.

(over)

DATE	PROCEEDINGS
9/25	Court allows defendants total of 4 conditional extra challenges. If the panel is not completed at the conclusion of the interrogation of remaining 26 jurors, the Court will undo the first conditional challenge and make that juror part of the panel and so on until there are 12 jurors and 2 alternates. 9 jurors accepted by both sides. 4:40 p.m. remaining jurors enter courtroom and excused to 10:00 a.m. September 27, 1974. Court adjourned to Friday. Newman, J. m-9/26/74.
9/27	JURY TRIAL CONTINUES: Continued jury selection. 30 jurors present. Court allows 2 additional challenges with respect to alternate One additional juror and two alternates accepted by both sides. 2:35 p.m. Jury selected enters courtroom and 12 jurors and two alternate impanelled and sworn. 2:45 p.m. Jury excused until notified to report by court. Continued hearing on defendants' Motion to Dismiss. Defendants' Ex. 4 filed. Decision reserved. Continued hearing on defendants' Motion to Suppress. Ralph Cimino previously sworn resumes stand and testifies. Defendants' Ex. 5 (Court Ex. 5), filed. Court Ex. 8 marked for identification. 1 Government witness sworn and testified. Government Ex. G marked for identification. Hearing on defendants' Motion for Free Transcript, denied. Defendants' Motion to Dismiss, denied. 5:15 p.m. Court adjourned to Sept. 30, 1974 at 10:00 a.m. Newman, J. m-9/30/74.
9/30	HASKINS, SIMMONS, ALSTON: Court Reporter's Notes of proceedings held on Sept. 24, 25 & 27, 1974 (Trial), filed. Gale, R. (3 pads)
9/30	JURY TRIAL CONTINUES: Continued hearing on Defendants' Motion to Suppress. Points and authorities in support of Motion for Free Transcripts, filed by defendant Haskins. Witness Sweeney resumes stand for continued cross-examination. Defendants' Ex. 6, filed. Court Exhibits 9, 10 and 11, filed. Attorney Clifford reports to court that his client wishes that he withdraw from the case. Court will not allow Atty. Clifford to withdraw but defendant Simmons may proceed pro se. Defendant Simmons renews Motion to Challenge Jury Array, denied. Defendant Simmons renews Motion to Dismiss, denied. 4 Government witnesses sworn and testified. Government Exhibits F, F-1 thru F-4 admitted as full exhibits. Government Exhibits H, H-1 thru H-15, I, I-1 thru I-4, marked for identification. Government Exhibit H made full exhibit. Attorney Rosen submits subpoena to court on behalf of defendant Alston. Court rules subpoena may issue. 3:55 p.m. Court adjourned to Wednesday, Oct. 2, 1974 at 10:00 a.m. Newman, J. m-10/1/74.
10/2	Court holds closed hearing on defendants' renewed challenge to a juror. Motion to challenge denied. Defendant Simmons' oral motion to disqualify Judge Newman, denied. Continued hearing on motion to suppress. 5 Government witnesses sworn and testified. Government witness James Grasso previously sworn resumes stand and testified. Court Exhibits 12, 13, 14, 15 and 16 marked for identification. Motion by Atty. Rosen to have law student intern Pam Samuelson admitted for the purpose of this case, denied. Appearance form, filed. Court Exhibits 17 and 18 marked for identification. Government Exhibits J, J-1 thru J-3, K, K-1 thru K-4, filed. Government Exhibits G, H-1 thru H-15, I, I-1 thru I-4, admitted as full exhibits. At bench, Court Exhibit 19 marked for identification and sealed per order of the Court. 5:10 p.m. Court adjourned to 9:30 a.m. October 3, 1974. Newman, J. m-10/3/74.
10/3	Marshal's Return showing service, filed: Subpoena (1).

DATE	PROCEEDINGS
1974	
10/3	Continued hearing on Motion to Suppress. Court Exhibits 20,
	21 and 22 marked for identification. 6 Government witnesses sworn
	and testified. Government Exhibits L, L-1 thru L-13, N, N-1 thru
	N-10, O and P, filed. Government Exhibits M, M-1 thru M-11 marked
	for identification. Government Exhibits M, M-1 thru M-11 admitted
	as full exhibits. 5:30 p.m. Court adjourned to Oct. 4, 1974 at
	10:00 a.m.
10/4	Continued hearing on Motion to Suppress. 1 Government
	witness sworn and testified. Court Ex. 23 marked for identification.
	Government Exs. Q and R-1 thru R-9, filed. Defendant Haskins sworn
	and testified on own behalf. Government witness Michael Sweeney,
	previously sworn, resumes stand and testified. Hearing on motion
	to withdraw in toto filed by Attorney Clifford. Decision reserved.
	Defendants' oral motion for certain portions of testimony of
	certain witnesses - decision reserved. At the Bench, Court Ex. 24
	marked for identification and sealed upon order of the Court, to be
	opened and inspected only upon order of another Court. Newman, J.
	m-10/7/74.
10/7	JURY TRIAL CONTINUES (evidence commences): Public Defender
	Clifford's motion to withdraw as counsel for defendant Simmons
	is denied and he will be available to defendant for consultation
	and advice. Oral ruling on Motion to Suppress Identification -
	granted as to witnesses Gambardella and Stonski; denied as to all
	other witnesses. Motion to Suppress re powder residue is denied;
	Court defers ruling on statements. Court Exs. 25, 26 and 27
	marked for identification. 11:20 a.m. 12 jurors and 2 alternates
	present. 3 Government witnesses sworn and testified. In absence
	of jury, Government witness Soo Kyung sworn and testified on offer
	of proof. Government Ex. S filed. 4:01 p.m. jury excused until
	Oct. 8, 1974 at 10:00 a.m. 4:02 p.m. Court adjourned until
	Oct. 8, 1974 at 9:45 a.m. Newman, J. m-10/7/74.
10/8	JURY TRIAL CONTINUES: Court Exhibits 28, 29, 30 and 31
	marked for identification. 5 Government witnesses sworn and
	testified. Defendant Haskins' offer of proof on motion to suppress
	testimony of witness, denied. 12:15 p.m. jury enters courtroom,
	12 jurors and 2 alternates present. Government Exhibits T, U, V, W,
	X and Y marked for identification. 5:12 p.m. Court adjourned until
	Oct. 9, 1974 at 10:00 a.m. Newman, J. m-10/9/74.
10/9	JURY TRIAL CONTINUES: Defendants' (Haskins and Alston) oral
	motion for severance, denied. Oral motion of defendant Simmons to
	disqualify Judge Newman, denied. 10:25 a.m. jury enters courtroom,
	12 jurors and 2 alternates present. Government witness Diane Tokarz
	resumes stand for further testimony. Court Exhibits 32, 33, 34, 35
	and 36 marked for identification. 5 Government witnesses sworn and
	testified. Witness Gambardella recalled in absence of jury for further
	testimony. 12:20 p.m. jury re-enters courtroom. Government Exhibits
	Z, AA and BB marked for identification. Government Exhibit AA admitted
	as full exhibit. 4:55 p.m. Court adjourned to Oct. 11, 1974 at
	9:30 a.m. Newman, J. m-10/9/74.
10/10	Court Reporter's Notes of proceedings held on Sept. 18, 1974
	(Motions), filed. Gale, R.
10/10	Court Reporter's Notes of proceedings held on Sept. 23, 27, 30,
	Oct. 2, 3 and 4 (Motions & Trial), filed. Gale, R. (5 pads)
10/9	HASKINS: CJA Form 21 authorizing and approving payment of

(over)

DATE 1974	PROCEEDINGS
	sum of \$102.60 to Court Reporter Gerald Gale for portions of transcript of pretrial hearings for use at trial, filed. Newman, J. Copies distributed.
"	SIMMONS: CJA Form 21 authorizing and approving sum of \$102.60 to Court Reporter Gerald Gale, for portions of transcript of pretrial hearings for use at trial, filed. Newman, J. Copies distributed.
"	ALSTON: CJA Form 21 authorizing and approving payment of sum of \$102.60 to Court Reporter Gerald Gale for portions of transcript of pretrial hearings for use at trial, filed. Newman, J. Copies distributed.
10/11	JURY TRIAL CONTINUES: Court Exhibits 37, 38 and 39 marked for identification. 10:10 a.m. Jury enters courtroom, 12 jurors and 2 alternates present. 4 Government witnesses sworn and testified. Government Exhibits T, U and V admitted as full exhibits. Government Exhibits CC, EE and FF filed. Government Exhibit DD marked for identification. In absence of jury Court discusses testimony to be brought in with offer of proof by Government. 12:00 noon jury re-enters courtroom. 12:55 p.m. jury excused to Tuesday at 10:00 a.m. Defendants' oral motion for a mistrial, denied. 1:03 p.m. Court adjourned to Oct. 15, 1974 at 9:30 a.m. Newman, J. m-10/15/74.
10/15	CJA Form 21 authorizing and approving payment of sum of \$300.00 to Paul Rinker, Investigative Associates, for services, filed. Newman, J. (HASKINS). Copies distributed.
10/15	Continued hearing on Motion to Suppress. Court Ex. 40 marked for identification. 1 Government witness sworn and testified. Defendants' Ex. 7 filed (Court Ex. 40 on Motion to Suppress). Court rules portions of testimony of Witness Baker is admissible. Defendant Haskins' oral motion for severance, denied. Court discusses testimony to be brought in with offer of proof by counsel for defendant Alston. JURY TRIAL CONTINUES: 10:50 a.m. jury enters courtroom, 12 jurors and 2 alternates present. Court Exhibits 41 and 42 marked for identification. 4 Government witnesses sworn and testified. Government Exhibit DD admitted as full exhibit. Government Exhibits GG, HH, and II filed. Defendants' Ex. 8 marked for identification. Government Exhibits JJ, KK, LL and MM marked for identification. In absence of jury Court discusses testimony to be brought in with offer of proof by counsel for defendant Haskins. Defendant Haskins' oral motion to sever, denied. Defendant Alston's oral motions to sever and for mistrial, denied. Court inquires of defendant Simmons on behavior during courtroom procedure. Defendant Haskins' motion for mistrial, denied. 4:30 p.m. jury re-enters courtroom. Continued examination of Witness Baker. 4:58 p.m. jury excused to 10:00 a.m. Oct. 16, 1974. 5:08 p.m. Court adjourned to 10:00 a.m. Oct. 16, 1974.
10/16	JURY TRIAL CONTINUES: Government reports one witness is sick and requests leave to reopen case if concluded today. Court grants motion to suppress signing of warning cards as to Simmons and Haskins. Continued hearing to suppress. 2 Government witnesses sworn and testified. Court Exhibit 43 marked for identification. Government Exhibits NN-1, NN-2 and NN-3 marked for identification at suppression hearing. Government witness Northrup resumes stand for continued direct. Government Exhibit OO marked for identification. 11:45 a.m. jury enters courtroom. Court Exhibits 44 and 45 marked for identification. 2 Government witnesses sworn and testified. Government Exhibits KK and OO made full exhibits. Government Exhibits NN-1, NN-2 and NN-3 made full exhibits for suppression hearing. Government

continued

DATE 1974	PROCEEDINGS
	Exhibits PP, QQ, RR, SS, TT, UU marked for identification. 3:00 p.m. jury excused from courtroom. After consultation with each defendant and counsel, the defendants are removed from courtroom for the remainder of this day. Defendants Haskins and Alston move for mistrial and severance. Motions denied. Defendant Haskins' motion to strike testimony of witness Baker is denied. Witness Baker may be recalled. 4:30 p.m. jury enters courtroom. Defendants are not present. Court Exhibit 46 marked for identification. 1 Government witness sworn and testified. Government Exhibits VV, WW and XX marked for identification. Government Exhibits VV, WW and XX made full exhibits. 5:00 p.m. jury excused until Oct. 17, 1974 at 10:30 a.m. Court withdraws its ruling on defendant Haskins' motion to strike testimony of witness Baker and gives option to defense counsel whether they will claim a mistrial or be satisfied with just the striking of said testimony. Counsel will advise court in the morning. 5:05 p.m. Court adjourned until Oct. 17, 1974 at 10:00 a.m. Newman, J. m-10/17/74.
10/17	JURY TRIAL CONTINUES: Court inquires of defendant Simmons, and of defendants Haskins and Alston individually on their behavior during future courtroom proceedings. Court Exhibit 47 marked for identification. Defendants' motion to strike testimony of Officer Baker is granted and motion for mistrial, denied. 11:07 jury enters courtroom, 12 jurors and 2 alternates present. Court informs jury all testimony of Officer Baker is no longer a part of this case. Court Exhibits 48, 49, 50, 51, 52, 53, 54 and 55 marked for identification. 6 Government witnesses sworn and testified. Government Exhibits YY, AC, AE, AI marked for identification. Defendants' motion to strike testimony of Witness Giannotti, denied. Government Exhibits ZZ, AB, AD, AE, AG, AH filed. Government Exhibits JJ, LL, PP, QQ, RR, SS, TT, UU, YY, Y, Z and AE admitted as full exhibits. Government Witness Broni resumes stand and testifies. 3:03 p.m. Government rests with leave to call one additional witness. 4 defendants' witnesses sworn and testified. 4:35 p.m. Court adjourned to Oct. 18, 1974 at 10:00 a.m. Newman, J. m-10/18/74.
10/18	JURY TRIAL CONTINUES: 12 jurors and 2 alternates present. Court Exhibit 56 marked for identification. 1 Government witness sworn and testified. Government Exhibit W admitted as full exhibit. Government Exhibit AJ filed. 10:24 a.m. Government rests. Two defendants' witnesses sworn and testified. Defendant Haskins sworn and testified on his own behalf. In absence of jury counsel for defendant Simmons requests that he be permitted pro se summation of his case to the jury - decision reserved. 12:00 N. jury enters courtroom. Continued examination of defendant Haskins. Defendant Exhibit 9 marked for identification. 12:45 p.m. defendant Haskins rests. Defendant Alston sworn and testified on his own behalf. 1:00 - 2:00 p.m. Court recess. Continued examination of defendant Alston. 2:32 p.m. defendant Alston rests. Defendant Simmons sworn and testified. 3:18 p.m. defendant Simmons rests. Jury recess. All defendants make oral motion for judgment of acquittal on Count 4. Court rules that Count 4 will not go to the jury. Request of defendant Haskins for instructions to the jury, filed. 3:26 p.m. jury enters courtroom and is excused to Tuesday at 10:00 a.m. Government requests for jury instructions, filed. Court hears counsel on

(over)

DATE 1974	PROCEEDINGS
	requests to charge. Court rules on requests to charge. Court will allow defendant Simmons to present his case to the jury. Weapons will not go to the jury room. Amended Indictment to be submitted. 5:14 p.m. Court adjourned to 9:30 a.m., Oct. 22, 1974. Newman, J. m-10/21/74.
10/21	ALSTON: Request of Defendant For Instructions to the Jury, filed by defendant.
10/18	HASKINS: CJA Form 21 authorizing and approving sum of \$125.00 to be paid to Alan S. Kay, Photographer, for services, filed. Newman, J. Copies distributed.
10/22	JURY TRIAL CONTINUES: Court rules on requests to charge. Court puts on record comment by juror to one court personnel at close of this case on Friday. 10:10 a.m. 12 jurors and 2 alternates enter courtroom. Summation: Government opens 10:11 - 10:40 a.m. Defendant Simmons 10:46 - 11:19 a.m. Recess. Summation continues: Counsel for defendant Alston 11:33 - 11:51 a.m. Counsel for defendant Haskins 11:51 a.m. - 12:15 p.m. Government closes 12:15 - 12:20 p.m. Court's charge 1:42 - 2:23 p.m. 2:23 p.m. 12 jurors retire to jury room. Alternate jurors excused. Government counsel takes exceptions to charge. All defense counsel take exceptions to charge. No further charge given. 2:37 p.m. Exhibits, Indictment taken to the jury room and jury starts to deliberate. 5:45 p.m. note from jury. Court Ex. 57 marked for identification. 5:52 p.m. jury enters courtroom. Court gives supplemental instruction to jury. 5:55 p.m. jury retires to jury room to consider whether to continue deliberations or return tomorrow. 6:05 p.m. note from jury. 6:07 jury enters courtroom. Court Ex. 58 marked for identification. 6:10 p.m. jury excused to 10:00 a.m. Oct. 23, 1974 and to start to deliberate when all 12 are present. 6:15 p.m. Court adjourned to 10:00 a.m. Oct. 23, 1974. Newman, J. m-10/22/74.
10/23	JURY TRIAL CONTINUES: 12 jurors report to jury room. Exhibits, for of verdict and Indictment sent to jury room and deliberations continue. 12:25 p.m. jury returns to courtroom with following verdicts: Defendants Simmons, Haskins and Alston guilty on each of Counts 1, 2 and 3. Jury polled and all answer in the affirmative. Court orders written verdict accepted and filed. 12:35 p.m. jury excused subject to call. Disposition scheduled for Nov. 13, 1974 at 10:00 a.m. 12:36 p.m. Court adjourned. Newman, J. m-10/23/74.
11/1	SIMMONS, HASKINS, ALSTON: Response to Defendants' Motions Seeking Disclosure of Electronic Surveillance, filed by the Government.
11/4	ADAMS: Magistrate's Warrant of Arrest, with Complaint attached, filed.
11/12	ALSTON: Defendant's Submission at Sentencing and Affidavit of Pamela Samuelson, filed.
11/13	Hearing on defendants' pending motion to prohibit interference with attorney-client relationship and therefore to dismiss indictment. Defendants' Exhibits 10, 11, 12, 13, 14, 15 and 16 to Suppression, filed. 3 defendants' witnesses sworn and testified. Defendants Simmons and Haskins, previously sworn at trial, take stand and testify. 10:00 a.m. Oral argument. Motion denied. Newman, J. m-11/13/74.
11/13	ALSTON: DISPOSITION: Imprisonment for period not to exceed 25 years on Counts 1, 2 and 3 as a general sentence, pursuant to 18 U.S.C. 4208(a)(1), defendant to become eligible for parole after 5 years. Court will not sentence pursuant to youth Corrections Act. Defendant

(continued)

DATE	PROCEEDINGS
1974	
	informed of right to appeal. Newman, J. m-11/13/74.
11/13	HASKINS: DISPOSITION: Imprisonment for period not to exceed 25 years on Counts 1, 2 and 3 as a general sentence, pursuant to 18 U.S.C. 4208(a)(1), defendant to become eligible for parole after 5 years. Defendant informed of right to appeal. Newman, J. m-11/13/74.
	SIMMONS: DISPOSITION: Imprisonment for period not to exceed 25 years on Counts 1, 2 and 3 as a general sentence, pursuant to 18 U.S.C. 4208(a)(1), defendant to become eligible for parole after 5 years. Defendant informed of right to appeal. Newman, J. m-11/13/74.
11/13	ALSTON: Judgment and Commitment filed and entered. Newman, J. m-11/13/74. Certified copies handed U.S. Marshal at New Haven.
11/13	HASKINS: Judgment and Commitment filed and entered. Newman, J. m-11/13/74. Certified copies handed U.S. Marshal at New Haven.
11/13	SIMMONS: Judgment and Commitment filed and entered. Newman, J. m-11/13/74. Certified copies handed U.S. Marshal at New Haven.
11/13	SIMMONS: Notice of Appeal, filed by defendant. Copies mailed to counsel.
11/15	HASKINS: Notice of Appeal, filed by defendant. Copies mailed to counsel.
11/15	HASKINS: Motion for Appointment of Counsel on Appeal, filed by defendant.
11/15	HASKINS: Motion for Release Pending Appeal, filed by defendant.
11/15	ALSTON: Notice of Appeal, filed by defendant. Copies mailed to counsel.
11/15	Defendants' Supplemental Submission in Support of Motion to Suppress Evidence Derived From Unlawful Electronic Surveillance, and Request For Hearing on Motion, filed by defendants.
11/15	Certified copies of Notices of Appeal and docket entries mailed to U.S. Court of Appeals.
* 11/18	HASKINS: Defendant's Motion for Appointment of Counsel on Appeal endorsed "Motion denied, without prejudice to seeking appointment by Court of Appeals. See Rule 4(b), Rules of the Court of Appeals for the Second Circuit." Newman, J. m-11/18/74. Copies mailed to counsel.
11/18	HASKINS: Defendant's Motion for Release Pending Appeal endorsed "Motion denied." Newman, J. M-11/18/74. Copies mailed to counsel.
*11/15	HASKINS, ALSTON: CJA Form 23, Financial Affidavits, filed.
11/15	ALSTON, SIMMONS, HASKINS: CJA Form 21 authorizing transcripts to be furnished by Gerald Gale, Court Reporter, to be used for appeal purposes, filed. Newman, J. Copies distributed.
11/19	Marshal's returns showing service filed; Warrants of arrest 3
11/19	Marshal's returns showing service filed; Applications for Writ of Habeas Corpus Ad Prosequendum.
12/2	Record on Appeal sent U.S. Court of Appeals. Copies of Index and docket entries sent counsel of record.

HEARING ON MOTION TO SUPPRESS ORAL STATEMENTS

8 MR. DOW: We don't have those witnesses available today.
9 We are prepared to go forward with respect to defendant Simmons.

10 THE COURT: All right. Let's find out what you are
11 offering.

12 MR. DOW: There was a statement -- I am going to
13 rephrase that. Upon arrest, Mr. Simmons advised that his name
14 was George Parkerson. He further indicated that while he did not
15 have in his possession at that time identification to that
16 effect, he had had such identification earlier in the day and
17 had lost it in the vicinity of the bank. That's a statement
18 that we intend to offer.

19 THE COURT: That's it?

20 MR. DOW: That's it.

21 THE COURT: This is all postarrest?

22 MR. DOW: This is all postarrest.

23 THE COURT: Is it possible to know what the claim is
24 as to why this statement should be suppressed?

25 DEFENDANT SIMMONS: Yes. I think the information should

1 be suppressed because I believe at the particular time my
2 rights were being violated, and the claim I think I heard,
3 overheard the claim to a rumor concerned my dropping an I.D.
4 card into a bank, Westville bank, and this was told to
5 defendant Michael Alston. I think it was Inspector DeRosa
6 or either Pastore mentioned that to Michael Alston saying that
7 he found an I.D. card of mine in the bank, so I think this is
8 what he is talking about.

9 THE COURT: Is that your claim, that an officer
10 said something to Mr. Alston about finding your card?

11 MR. WILLIAMS: May I talk to the client?

12 THE COURT: Are you representing him? What's
13 happening here?

14 MR. WILLIAMS: Apparently Mr. Clifford doesn't wish
15 to do so.

16 THE COURT: There is no issue at all about Mr. Clifford
17 not wishing to do so. He has been in attendance throughout
18 and is available to represent. It's Mr. Simmons that preferred
19 not to have Mr. Clifford represent him. Mr. Clifford is not
20 reluctant, that's a highly uncalled for characterization of facts.

21 MR. WILLIAMS: I would like to have a consultation.

22 THE COURT: Are you undertaking to represent Mr.
23 Simmons, Mr. Williams?

24 MR. WILLIAMS: No, the three attorneys in this case
25 are attempting to have a consultation.

1 THE COURT: You are not representing Mr. Simmons?

2 MR. WILLIAMS: No, I'm not.

3 DEFENDANT SIMMONS: To the best of my knowledge, I
4 don't recall making any statements concerning the claim, and
5 if anything should come up in evidence to that sort, I think
6 it was a violation of my rights, you know, because I should have
7 had the right to counsel concerning this particular matter, so
8 I move to suppress.

9 THE COURT: When you say you should have the right to
10 counsel, is your claim you should have a lawyer there or you
11 weren't told about your rights to counsel?

12 DEFENDANT SIMMONS: Right. I feel that --

13 THE COURT: Which?

14 DEFENDANT SIMMONS: I feel I should have had an
15 attorney there to advise me of my rights, you know, concerning
16 this situation. I felt that was a violation of mine and -- my
17 constitutional rights.

18 THE COURT: Because an attorney wasn't there?

19 DEFENDANT SIMMONS: Because I was not advised of my
20 right.

21 THE COURT: You weren't told of your rights, is that
22 your claim?

23 DEFENDANT SIMMONS: I was not advised of my right.

24 THE COURT: All right. I don't want to leave that one
25 other matter unclear. Mr. Williams, is there any basis for your

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1 observation about Mr. Clifford?

2 MR. WILLIAMS: I am not quite sure what your Honor
3 is directing his comments. I would be less than candid if I
4 didn't say that I was taken by surprise when the matter of
5 moving to suppress Mr. Simmons' alleged statement was handled
6 in the way it was, because it was not my understanding that
7 was quite the way it was going to be handled. It was my
8 understanding that Mr. Clifford was going to be taking a more
9 active role in that aspect of this case, and I think that's all
10 I would wish to say at this time.

11 THE COURT: I asked you a more specific question.
12 You made a characterization, and I want to know if you have any
13 particular basis for it.

14 MR. WILLIAMS: If your Honor would refresh me as to
15 specifically what's out of --

16 THE COURT: You said Mr. Clifford was unwilling to
17 represent Mr. Simmons.

18 MR. WILLIAMS: It was my impression, based on what
19 happened around the counsel table at that particular moment.

20 THE COURT: Which particular moment?

21 MR. WILLIAMS: Before I stood up. Mr. Clifford had
22 been asked to take a more active role, and he declined to do that.

23 THE COURT: Had been asked by whom?

24 MR. WILLIAMS: Mr. Simmons.

25 THE COURT: Who told you that?

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1 MR. WILLIAMS: Mr. Simmons.

2 MR. CLIFFORD: May I address the Court?

3 THE COURT: Surely.

4 MR. CLIFFORD: Mr. Simmons, at 2 o'clock recess,
5 requested I file papers on the motion to suppress. I indicated
6 that the motion to suppress had been filed, and that on his
7 behalf I had filed an all-encompassing motion requesting to be
8 joined within all pending motions with all other defendants
9 of the case, and I felt under those motions that his rights
10 under the motion to suppress were protected.

11 Prior to his coming to the rostrum to address the
12 Court on the claims, he requested me would I take over the motion
13 to suppress. I indicated to him that I was not willing to do
14 that, that I had been discharged as his attorney, and that I
15 felt that my responsibility was that of an advisor. Advise him,
16 I will, upon request. It was not my place, as I saw. At least,
17 as I see my professional responsibility, not to be dragged in
18 and out of a case as when the going gets rough or when he thinks
19 he wants to have a lawyer to handle his specific aspect. It
20 conflicts with my view of my professional responsibility. My
21 answer to him was: no, I would not like to do that, and so long
22 as I am in the role of an official advisor, I will certainly do
23 what that role calls for. I don't think that calls for in and
24 out of the case on a representational basis, because that involves
25 professional responsibility, and I see those two, at least, in

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1 my present role.

2 THE COURT: Mr. Simmons, I think you are going to have
3 to decide whether Mr. Clifford represents you or whether he
4 doesn't. You indicated to me you didn't want him to represent
5 you, that you wanted to represent yourself, and I let you do that.

6 Now, you obviously run certain hazards by representing
7 yourself, but you seem to have thought about that and wanted
8 to represent yourself. If that's really what you want to do,
9 you can do that, but now it seems that we have reached a point
10 where you want Mr. Clifford to represent.

11 DEFENDANT SIMMONS: No, Judge, I think Mr. Clifford
12 misunderstood me, because I don't think that he gave me the
13 opportunity to explain exactly what I wanted him to do. The
14 reason why I asked Mr. Clifford's assistance was because I
15 was under the impression that I was going to be called up for
16 testimony, and then being so in that particular case, I
17 preferred him to lo the questioning, and this is the reason why
18 I asked for his assistance. As far as Mr. Clifford's advising
19 me, you know, on various things and what not, I don't think Mr.
20 Clifford have done too much of advising, you know, when, in
21 fact, I felt Mr. Clifford's attitude towards me have become
22 very negative since the time that I had dismiss him as my attorney.
23 During the time that I mentioned that I wanted to handle my own
24 defense, I mentioned on the grounds on the objective reasoning,
25 and that still stands, and I mentioned to the Court before that

1 that I was not knowledgeable, you know, concerning the proceedings
2 and rules and regulations of the court, and I also mentioned to
3 the Court that I am the defendant, you know, today the same way
4 I was from the time that I was a kid, and this is just a
5 continuance of my struggle against oppression, and I feel that
6 I should demonstrate, that I should, you know, try to defend
7 myself by any means necessary, as I have done in the past.

8 Now, as far as I understand that being that you are
9 not partial as far as the Judge is concerned, that you would
10 take advantage of a situation and then you would openly deny me
11 a lot of rights under the U. S. Constitution, I understand
12 that that I wouldn't expect anything better of you. That's
13 because that fits in with your character, but as I said before,
14 the reason why I am handling my defense is because of objective
15 reasoning, and as far as the issues concerning Mr. Clifford,
16 we can forget about that and move on with the lynching.

17 THE COURT: Well, Mr. Simmons, you can conduct your
18 defense, as I indicated to you, provided you abide by certain
19 minimal standards of decorum. I have tolerated some excesses.
20 I am not going to tolerate them when a jury is present, and the
21 reason for that is that while you may not mind what the jury thinks
22 of what you say, you are not the only defendant in this case,
23 so when a jury is present, I have to be concerned about any
24 effects on other defendants, and you are going to have to use
25 far more restraint in the way you conduct yourself when the jury

1 is present, or else your opportunity to defend yourself is
2 going to cease. Apparently you didn't want Mr. Clifford to do
3 something. It's still not clear to me entirely what, whether
4 it was to conduct an examination of you from the witness stand,
5 or what it was, but his status is going to continue as I had
6 understood it was from the moment that you decided to proceed as
7 your own counsel. He is going to remain in attendance, he will
8 be available to you to respond to any inquiry of yours, and
9 if in his judgment some matter arises where he thinks he should
10 bring to the Court's attention some matter to protect your
11 rights, even though you may not think it's necessary, he should
12 feel free to do that. If there is any issue that arises where
13 it's not clear to you what the nature of his role is, then you
14 bring that to my attention. I am not going to leave that to
15 a discussion with counsel for another defendant, and have any
16 misinterpretations.

17 If Mr. Simmons feels that there is any issue arising
18 where he wants Mr. Clifford to do something and he isn't clear
19 whether it's an appropriate request or how to present it or
20 anything of that sort, then you can present it to the Court.
21 Mr. Williams has his own responsibilities in this case, and they
22 extend to representing Mr. Haskins.

23 Now, in connection with this motion to suppress a
24 statement, Mr. Simmons, do you want Mr. Clifford to assist you
25 in any way? Mr. Simmons?

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1 DEFENDANT SIMMONS: You know, I feel that I should do
2 what is best to build a strong defense, you know, it's my right
3 to do such and --

4 THE COURT: All I want to know is: Do you want his
5 assistance or not in connection with this motion?

6 DEFENDANT SIMMONS: As far as Mr. Clifford being able
7 to assist me in anything, I indicated that, you know, when I asked
8 Mr. Clifford, you know, to participate, you know, in a particular
9 hearing and I further would like to state that as far as counsel
10 is concerned, I think it's right for the counsel to engage
11 into a conversation whereas they could coordinate the defense,
12 and then the fact that you breaking the procedure that we was
13 dealing with a few minutes ago shows that you are highly
14 prejudiced towards myself and the other two defendants and --

15 THE COURT: Let me try again. It's a simple question
16 -- excuse me, Mr. Simmons. Do you want Mr. Clifford to assist
17 you in the presentation of this motion? It's a very simple
18 question, and now is the time when I need to have an answer to
19 it. I don't need a speech, I just need an answer to a simple
20 question. Do you want him to assist you in the presentation of
21 this motion?

22 DEFENDANT SIMMONS: No, I don't want him to assist
23 me in the presentation of the motion.

24 THE COURT: Are we ready to proceed with the motion?

25 MR. DOW: Yes. The government will call Officer Northrop.

1 (Jury not present.)

2 THE COURT: The first thing I want to take up is the
3 question of Mr. Clifford's role with respect to Mr. Simmons.

4 Mr. Simmons, let me take up one or two things with you,
5 first. Would you come up here for a moment, please?

6 You have previously indicated on several occasions
7 that you want to defend yourself in this trial, and since we
8 are about to start the trial itself, at least the jury phase of
9 the trial, I want to be absolutely certain that that is the
10 decision that you have decided to make. Is that what you want to
11 do?

12 DEFENDANT SIMMONS: Yes, that's a decision I want to
13 make, and you know, to verify, to keep me from going over and
14 over again, you know, in this particular issue, why don't you
15 check back on the record and try to refresh your own memory
16 about this.

17 THE COURT: I have not forgotten what you said, but
18 now that we are at a point where the trial gets into a somewhat
19 different phase, I want to be sure that you still want to defend
20 yourself. I have not forgotten what you said.

21 How much education have you had?

22 DEFENDANT SIMMONS: Well, that's a very difficult
23 question. I don't --

24 THE COURT: How many years did you go to school?

25 DEFENDANT SIMMONS: That's still not -- that's still a

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1 very difficult question. If you are talking about how much
2 years of institutional indoctrination I have had --

3 THE COURT: How many years have you gone to school?

4 DEFENDANT SIMMONS: This didn't contribute to my
5 education.

6 THE COURT: I don't want to discuss the merits of
7 education today. Just tell me how many years you were in
8 school; through what grade did you attend school?

9 DEFENDANT SIMMONS: Are you specifically speaking about
10 the institutionalized indoctrination that I received from the
11 government?

12 THE COURT: Any schools at all.

13 DEFENDANT SIMMONS: I had 12 years of that.

14 THE COURT: You went through high school, is that right?

15 DEFENDANT SIMMONS: Yes.

16 THE COURT: Did you graduate from high school?

17 DEFENDANT SIMMONS: Yes.

18 THE COURT: Did you go to any schooling beyond high
19 school, college, or training school or vocational school?

20 DEFENDANT SIMMONS: Only for a short period, I took a
21 few college courses at Maryland University Extension in Weisbaden,
22 Germany, and I had some courses at RCA Institute --

23 THE COURT: What institute?

24 DEFENDANT SIMMONS: RCA Institute, and I also went shortly
25 at a school, Computer Studies, in New York, but not to a point

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1 where I gained anything by it, you know, economically.

2 THE COURT: All right. As I think I have said to you
3 earlier in this trial, a person who decides to defend himself
4 generally takes on added problems, and sometimes added risks,
5 and it's not a course that I would recommend to anybody, and I
6 don't think any attorney would recommend to anybody.

7 On the other hand, it's something that you are entitled
8 to do. There is a statute that gives you that right, and in this
9 Circuit our Court of Appeals has said that it's a constitutional
10 right to defend yourself, provided you do so according to the
11 general rules of procedure and decorum that apply.

12 Now, I have observed you during the pretrial proceedings
13 and as far as I can tell, you have been able to conduct yourself
14 appropriately, and as far as I can see, a full understanding
15 of the proceedings, so that I don't see any reason why you are
16 not entitled to defend yourself if that's what you want to do.
17 But since we are entering the jury phase of the case, I just want
18 to be certain that's the course you have decided to take; and
19 apparently, it is. Is that right?

20 DEFENDANT SIMMONS: Yes.

21 THE COURT: There will be one problem which I ought
22 to call to your attention, which you may have already noticed
23 in connection with the presentation of eyewitnesses who appeared
24 at the pretrial hearings, and may well appear at the trial itself;
25 and that is there is something of an extra risk when a defendant

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1 examines an eyewitness to a crime, and that risk is that the
2 responses of that witness may not only describe what a defendant
3 did, but when a defendant asks questions, the responses may get
4 rather pointed and call the jury's attention to a defendant's
5 role more so than if the questions were put by a lawyer for a
6 defendant. I think you had a chance to see that happening when
7 some of the witnesses answered your own questions.

8 I am not going to tell you you can't question them.
9 I simply want to point out that there is an added risk involved
10 in conducting your own examination of an eyewitness, but if
11 that's what you want to do, you are free to do it.

12 I am going to deal separately with Mr. Clifford's
13 role, but I wanted to first be sure there was no misunderstanding
14 as to your role. I am satisfied there is none, that there is
15 no question you are unable to understand what you are doing,
16 you have made a fully considered choice, and while you are not
17 trained in the law, your education and your knowledge that you
18 have displayed in the courtroom thus far persuades me there is
19 absolutely no reason why I should not permit you to continue
20 defending yourself.

21 DEFENDANT SIMMONS: I hope that you won't reach the
22 point where you would come to the decision that you feel that
23 you should not allow me to defend myself. I mean, I think that's
24 -- that would be highly out of order.

25 THE COURT: I hope we won't come to that point, either.

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1 DEFENDANT SIMMONS: Once you reach that particular
2 point, I mean, you get, you know, just gone on and deal with
3 the situation which had been predetermined, what's supposed to
4 take place after these proceedings after this particular
5 murderous chess game in dealing with, you know. You oppress me,
6 Judge Newman.

7 THE COURT: I hope we won't reach that point, either,
8 Mr. Simmons. I am certainly not going to make any change based
9 on the quality of your representation of yourself. I have no
10 concern on that score that you need the appropriate standard for
11 representing yourself. The only possible way that your right to
12 defend yourself might be in jeopardy for the balance of this
13 trial is if your own conduct, your own language and your own
14 tactics are such that they exceed the fair bounds of propriety.
15 If that happens, as I have told you before, you will lose the
16 right to defend yourself.

17 DEFENDANT SIMMONS: I will try not to scream throughout
18 this lynching proceeding. As far as the language and behavior
19 and what not, yours is very different from mine because of our
20 culture and our environment. But I'm the one that's being oppressed
21 and you are managing this further oppression of me, so I am the
22 one who would normally be doing the screaming, and I am the one
23 who has to hold that super restraint, you see, so I try not to
24 scream because I feel that the jury won't understand that. If I
25 scream, which I have to suppress that, you know, within myself

1 and, you know, I try not because of you, not because of your
2 proceedings and your -- I will try for my benefit because I
3 really want the jury to understand me as a human being, and
4 anything that I do within this courtroom I will do it for the
5 benefit of myself and my comrades. That's the thing that we
6 have to get --

7 THE COURT: Let's be clear about one thing. The
8 fact that you decide that what you are doing is for your benefit
9 does not mean that I am going to permit you to do anything you
10 choose to do. You mention screaming; I don't anticipate you
11 are going to scream, but I think you understand that that's one
12 of the things that I am not going to permit.

13 There is no point trying to anticipate everything else
14 you might do. I simply want you to understand that I am going
15 to have to maintain certain rules and certain procedures. You
16 may not agree with some of those; you may not like some of the
17 rulings. Most people, whether they are lawyers or nonlawyers,
18 who are told by the Court that they have lost a ruling, don't
19 like it, so you are not alone in that, but anyone who appears in
20 this court in a representative way, whether they like it or not,
21 has to, in this court, abide the rulings. If they are wrong,
22 then those rulings can be challenged on appeal.

23 So I want to be clear with you, that if things occur
24 that I think are beyond the rules, I am going to stop you, and I
25 may stop you right on the spot without letting you finish what

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1 I deem to be something that's improper.

2 You may not like those rulings, Mr. Williams may not
3 like my rulings, Mr. Rosen may not like my rulings, Mr.
4 Clifford may not like them, and Mr. Clark may not like my
5 rulings; but they are going to be made in the normal course in
6 this trial, as in any other trial, and if you find that you
7 can't abide by them, that, too, will risk the loss of your right
8 to represent yourself just as any person representing somebody here
9 if he flouted rulings and continued to do what I have said could
10 not be done, that attorney would not be permitted to continue.

11 I don't anticipate we are going to have those problems.
12 I hope we are not.

13 It seems to me -- as I said to you last week -- it seems
14 to me you are quite in earnest in wanting to defend yourself,
15 that you are serious about it, and so I fully anticipate, as of
16 now, that you will be able to continue through this trial
17 representing yourself. But I just want you to understand that
18 it's not something that you can do in the way you choose to do
19 it. There are some limits, and if I see that those limits are
20 being overstepped, I am going to have to enforce the rulings.

21 DEFENDANT SIMMONS: What you are saying, when a boot
22 is on my neck, I should be polite about it and be a real
23 gentleman about it and go to certain procedures and ask and
24 pray that that boot be moved from my neck. Judge Newman, I have --
25 know that about is on my neck. I think the natural response is

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1 to snatch it off, snatch the nail off, and I understand the
2 reason why you're giving all these defined speeches and
3 everything, just to build up points on that record so you can get
4 me on the chessboard. I understand your strategy is twofold,
5 and threatening to provoke, that's your strategy. I got you
6 pinpointed just like I have your bosses pinpointed, Judge Newman.

7 THE COURT: You can't characterize --

8 DEFENDANT SIMMONS: All this politeness and stuff like
9 that, you can take that back to the church that you go to, or you
10 can take it back to the sermon and all that, but I don't believe
11 -- what you're dealing with now, you're dealing with my life,
12 and you expect me to stand mute and foam at your rules and
13 regulations while you systematically murder me. That's insulting
14 my intelligence.

15 THE COURT: I don't expect you to stand mute at all.
16 Indeed, the record, to date, would, I think, be eloquent testimony
17 that I am willing to listen to a good bit.

18 What I am saying to you, and I want you to understand,
19 that if we reach a point where I make a ruling, and if because
20 you don't like it, persist in not following it, that's going to
21 be another situation. But in no sense are you required to stand
22 mute, but you are going to be required to abide by rulings, just
23 as anybody in this court who undertakes to conduct a defense is
24 required to abide by rulings.

25 All right. Mr. Clifford, with respect to your motion

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1 to be permitted to withdraw from the case entirely, the
2 situation that I have confronted is this: Mr. Clifford was
3 originally appointed to represent Mr. Simmons, inasmuch as Mr.
4 Simmons requested appointed counsel and was eligible for the
5 services of the Public Defender.

6 During the course of the pretrial proceedings, Mr.
7 Simmons indicated that from that point on he wished to proceed
8 pro se and defend himself. At that point, I indicated to Mr.
9 Clifford that he should remain in attendance and be available
10 for certain assistance, but without fulfilling the full
11 responsibilities of an attorney. And that, in turn, precipitated
12 Mr. Clifford's motion made last Friday that he be permitted
13 to withdraw from the case entirely on the ground that the
14 in-between role that has been imposed on him, in his judgment,
15 was inconsistent with his proper role as an attorney, as an
16 officer of the Court, and inconsistent with the provisions of
17 the Criminal Justice Act, and inconsistent with the proper
18 functioning of the Public Defender's office.

19 I have looked into the matter and find that the role
20 of an attorney, once appointed for an indigent defendant, who
21 during the course of a trial prefers to act pro se, that role
22 has been well recognized by what I deem to be controlling case
23 law, and I will simply put on the record the authorities that I
24 am relying on: The concurring opinion of the Chief Justice
25 in Mayberry against Pennsylvania, 400 U.S. 455 at 466, which

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1 refers to the "limited role of a consultant" in such
2 circumstances; U.S. against Dougherty, 473 F. 2nd, 1113, the
3 D.C. Circuit there characterized the role as "amicus curiae to
4 assist the defendant". U.S. against Price, 474 F. 2nd, 1223, the
5 Ninth Circuit indicated that counsel could be required "to be
6 present and prepared to give advice", but the Court also observed
7 that counsel may not interfere with the defendant's presentation
8 and "may give advice only upon request". United States against
9 Spencer, 439 F. 2nd, 437, in which the Court of Appeals for this
10 Circuit said counsel in such circumstances was "to be available
11 as a resource to the extent that the defendant may wish to make
12 use of his services". And finally, U.S. against Johnson, 434 F.
13 2nd, 827; and also Washington against the United States, 214 F.
14 2nd, 876.

15 The only case I find that raises any question about
16 the practice is Collins against Heinze, 125 Fed. Supplement,
17 186. That case did not come up upon a counsel's motion to
18 withdraw, but came up in the course of a defendant's claim that
19 he did not have proper representation; but in reviewing the case,
20 the District Judge in the Northern District of California did
21 share many of the sentiments Mr. Clifford expressed last Friday
22 as to the difficult nature of the in-between role thus put upon
23 a counsel. That view doesnot seem to be shared by the Ninth
24 Circuit, nor by the other authorities I have cited.

25 I also rely on the -- in part, on the minimum standards

1 concerning the action of the trial judge promulgated by the
2 American Bar Association, which had number 6.7, recommended
3 that the District Judges to "consider the appointment of standby
4 counsel to assist the defendant when called upon"; and the
5 standard says that standby counsel should always be appointed
6 in cases that are expected to be long or complicated, or in
7 which there are multiple defendants. The commentary observes
8 that counsel is to "assist the accused if and when called upon".

9 So it seems apparent to me that the courts have not
10 only recognized the appropriateness, but specifically advised
11 District Judges to be sure that a role, called advisor or
12 standby or similar words, is employed.

13 Our Circuit was quite specific on this point in U.S.
14 against Spencer. So I am going to deny Mr. Clifford's motion
15 that he be permitted to withdraw from the case entirely. I am,
16 however, going to modify in one respect the nature of the
17 obligation I imposed upon him. It seems to me that while the
18 cases describe the obligation in quite different terms and are
19 not always consistent, the prevalent theme seems to be that the
20 advisor is to be available for advice. There are one or two
21 cases that talked about his role as an advisor to the Court. It
22 seems to me there is an inconsistency there with his role as
23 being available as an advisor to the defendant, but I think Mr.
24 Clifford is right in suggesting that if he is to volunteer
25 advice to the defendant, not on every issue he would if he were

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1 counsel, but only on some issues, he is left with no standards
2 at all, and I think he is right in seeking relief from that type
3 of obligation.

4 If there are matters where a defendant, by represent-
5 ing himself, runs extra risks, apart from the general risk of being
6 his own counsel, it seems to me it's the Court's responsibility
7 to point that out, and I will endeavor to do so during the
8 course of the trial. Mr. Clifford's role will be to remain in
9 attendance, to be available to Mr. Simmons at any time for
10 consultation and advice in the event Mr. Simmons requests it,
11 to be available to handle any function as attorney in the case
12 in the event Mr. Simmons requests that he do so.

13 Now, there may be limits to that role, because there are
14 cases indicating quite clearly that the defendant can't have
15 it both ways, that he can't be his own lawyer and also have a
16 lawyer. I don't contemplate a situation where, to reduce it
17 to an absurdity, Mr. Clifford is going to be asked to ask every
18 other question interspersed with questions by the defendant, but
19 if we reach a point, as we reached last week, where some particular
20 area of attorney performance is better handled, in the defendant's
21 judgment, by Mr. Clifford than by himself, such as the argument
22 on a legal issue which came up last week, it seems to me it's
23 quite appropriate for Mr. Simmons to be able to ask his advice
24 or to perform that role. If we reach a point where the performance
25 of that role should become an inappropriate discharge of an

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1 fact that he could, by rubbing them or making any use of them,
2 threaten the validity of the test results; and finally, that
3 a technique used, as far as the evidence has been developed
4 thus far, seems to be reasonable and not to involve any greater
5 intrusion upon the person of the defendants than was reasonably
6 required by the test procedure; for those reasons, I am
7 satisfied that the use of this particular test on a person in
8 custody pursuant to a valid arrest was a search incident to the
9 arrest for which a separate warrant was not required.

10 I will defer ruling on the postarrest statements for
11 the time being. I simply want to inquire, as a result of the
12 bench conference on Friday, whether counsel wish any cautionary
13 instruction to the jury on the subject we discussed at the
14 bench?

15 MR. WILLIAMS: I think it's our feeling that a
16 cautionary instruction to the jury would merely further call
17 the jury's attention to the security procedures, so we don't
18 ask for those instructions.

19 In that regard, however, I neglected to mention at
20 the bench on Friday one other problem area that we have with
21 the present security. It's been our observation that every time
22 Mr. Simmons stands up to address the Court in his role as counsel
23 for himself, every time he approaches the bench pursuant to the
24 Court's direction, that the marshal immediately rise and begin
25 to hover about him. In view of the fact that we have had various
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1 security measures undertaken in the court, including, over our
2 objection, an apparently armed guard posted in the balcony, I
3 think that it is unnecessary to have these marshals hovering about
4 him. I think it's highly prejudicial, not only to Mr. Simmons,
5 but to all of the defendants, and I object to it and ask that
6 it be discontinued at any point when the jury is in the room.

7 THE COURT: The procedure the marshals have endeavored
8 to follow has been that when any defendant is either at the
9 lectern or in any close proximity to a witness, that a marshal
10 has been taking a seat, well, they had been using the end seat
11 in the jury box. I assume since that will be filled, it will be
12 the next chair over.

13 I don't consider that hovering, and I think it's a
14 reasonable position. I think they have been endeavoring to take
15 that position as unobtrusively as they can. Similarly, with
16 a bench conference, I think it's been as unobtrusive a
17 positioning as could be expected, and an appropriate one under
18 the circumstances, and the --

19 MR. WILLIAMS: If I may make a suggestion that could
20 solve the problem, perhaps, I see nothing wrong with having a
21 marshal always sitting in that chair over there at the end of
22 the jury box. That would be unobtrusive. I have no objection
23 to having a marshal sitting with your clerks next to the bench
24 all the time. If it's done at the time, then, it's not
25 obtrusive. Certainly, they are not garbed in any obtrusive

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1 manner.

2 My objection is to the fact they stand up and assume
3 those positions only at certain points, and those are points when
4 there is activity by the defendants, and particularly by Mr.
5 Simmons, so all I would ask, I don't object to having them in
6 the courtroom, I don't object to their being in those positions,
7 in general, but it's just taking them under those circumstances.

8 If the Court wishes to station them there, I wouldn't
9 object. I would ask the Court to follow that procedure, as
10 distinguished from the present one, which I think clearly,
11 therefore, would preserve the security you feel is necessary
12 without the attendant prejudice to the defendants.

13 THE COURT: I think we will have to work this out as
14 we go along.

15 MR. DIRIENZO: May I approach the bench?

16 THE COURT: The Marshal advises me that the marshal
17 who escorts the jury in and out will resume his seat at the
18 side of the jury, which will make it unnecessary for any other
19 marshal to take any different position when a defendant is at
20 the rostrum or near the witness area.

21 As far as the bench conferences, I am not going to
22 lay down any hard and fast rule about that. Normally, the
23 marshal who has been in any proximity to that has been Chief
24 Deputy Marshal DiRienzo, who moves in and out of the courtroom
25 at various times, depending upon the press of his other business,

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1 and if there is a bench conference, there is some activity,
2 the Clerk comes over, the court reporter comes over and my
3 law clerks come over, and I think that's been handled on a
4 very unobstrusive basis.

5 I will keep an eye on it, and I am sure the Marshal
6 will cooperate in having his role remain as unobstrusive as can
7 reasonably be handled.

Manacchio - direct/cross

MR. CLARK: No further questions.

CROSS EXAMINATION

BY MR. WILLIAMS:

Q Only three people in the cab?

A Yes.

Q During the period you just testified about, were you injured in any way?

A No, sir.

MR. WILLIAMS: Thank you.

MR. ROSEN: No questions.

CROSS EXAMINATION

BY DEFENDANT SIMMONS:

Q Sir, during your abduction, was you threatened in any way at any time by the people who allegedly took over the cab?

A No.

Q Did the people indicate to you at any time that no harm would come to you?

A Did they say that no harm would come to me? Yes, they did.

Q About how frequently was it that this indication was made that no harm would come to you?

A A few times.

Q Five or six times?

A Yes, something like that.

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Manacchio - cross

1
2 Q Did you, at any time during this abduction, get into
3 a conversation with any of the people alleged?

4 A Just asking them what they were going to do with me.

5 Q After you asked them what they were going to do with
6 you, did they give you an answer to that question?

7 A They simply told me that I was going to be removed
8 into a van at that time.

9 Q Did you ask them the reason that you was going to be
10 removed, or you just left the situation as it was after they
11 said that you was going to be removed?

12 A I asked them why they had to keep me, and they simply
13 stated that they couldn't let me go at the time because,
14 naturally, I would call the police. That was about it.

15 Q Did you give your assurance to them that you would not
16 call the police, or did you -- didn't respond to that particular
17 statement?

18 A I didn't give them -- I don't understand the question,
19 really.

20 Q You did testify that you could not make a positive
21 identification of any of the alleged suspects?

22 A Right.

23 Q Is it fair to say that you didn't see the suspects
24 clearly enough to identify them?

25 A That's right.

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Manacchio - cross

Q Is it fair to say that the reason you did not make a clear and positive identification of any suspect was not because you was in an atmosphere -- you was in an threatened atmosphere and you felt threatened during the whole time and extremely nervous and you couldn't recall?

A I didn't bother looking at them, if that's what you're trying to say. I was told to keep my head down, and that's what I did.

Q Did they speak to you in a very demanding type voice, or was they very friendly during the time that they spoke to you?

A When they -- when one of them spoke to me, he just, you know, simply kept repeating that I wouldn't be hurt and to keep calm. That was about it.

Q During the time of your abduction, how many people spoke to you, during that particular time, if you can recall?

A Two of the men in the cab spoke to me, and the one in the van spoke to me.

Q After the people indicated that they wouldn't bring any harm on you, and emphasized it five or six times, did you feel any relief after knowing this or after getting this information from the people who allegedly abducted you?

A Slightly, yes.

Q Did the people who allegedly abducted you made any statements to you concerning what was taking place and what was

Manacchio - cross

about to take place and the reason for it?

A No.

Q Did they tell you the reason why they was using your cab?

A No.

Q Did you ask them?

A I don't remember. I don't believe I did.

Q You did give a statement to the FBI concerning the events that happened on May 3rd, 1974?

A Yes.

Q After you was taken from the cab, was you handled in a rough manner, or was you handled gently, or were you handled in a way where you didn't feel that you was further threatened?

A I wasn't roughed. I was simply escorted from the cab and into the van, and I couldn't see because I was blindfolded.

Q During the time of your alleged abduction, was you allowed to smoke?

A Yes.

DEFENDANT SIMMONS: No further questions.

THE COURT: Any redirect?

MR. CLARK: No, your Honor.

THE COURT: Anything further of this witness?

MR. WILLIAMS: No, your Honor.

THE COURT: You are excused.

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McCarthy- cross

CROSS EXAMINATION

BY DEFENDANT SIMMONS:

Q Miss McCarthy, you did describe a gun and the individual who -- that went into the bank had. You also described that gun as being a shotgun?

A Yes, I did.

Q Did you testify onetime, or give information to the police saying that you couldn't describe the gun, but the only thing that you knew was that it was a long gun?

A I don't recall saying that.

Q During the time that you saw the gun and immediately after you saw the gun, had you established in your mind right then what kind of gun it was, or you just assumed it was a rifle or what?

A I didn't assume. I knew it was a gun. I knew it wasn't a pistol. I knew that it was a shotgun.

Q You immediately knew it was a shotgun?

A I saw it. I knew it was a shotgun, yes.

Q Did you tell the New Haven Police Department that you knew it was a shotgun?

A I don't remember if I did.

Q During the time you gave a statement to the New Haven Police Department, did you at that time give the New Haven Police Department a true recollection of events that took place, to your

McCarthy - cross

1
2 A I don't think they ever asked me that.

3 Q I'm speaking in relationship to the overall
4 statement, you told the police department exactly what you saw
5 took place, not basing it on what you thought took place during
6 the time that you could see certain things, but exactly what you
7 saw. Did you?

8 A I'm not understanding your question.

9 Q Did you tell the New Haven Police Department exactly
10 what you saw take place other than what you assumed took place
11 during the time you wasn't able to see everything that took
12 place?

13 A In the first place, I didn't assume anything. I told
14 the police who interviewed me what I saw. It was not an
15 assumption. I did see it.

16 Q I have a statement here from the New Haven Police
17 Department relative to a question concerning description of a
18 particular gun. There is a question right here, and this is what
19 you answered.

20 A Well, in relation to saying that it's a long gun, I
21 think I meant that in terms that it was not a pistol, that it
22 was a long gun as opposed to what a pistol would look like.

23 Q Did you tell the police department that: "I can't
24 describe the gun, or I can say was that it was a very long gun,
25 and the person was a black male"?

McCarthy - cross

1
2 A You have it down there, so I must have said it.

3 Q And then you later testified that you described the
4 gun and recognized the gun to be a shotgun?

5 A I knew it wasn't a pistol.

6 Q I understand that, I understand you know that it
7 wasn't a pistol, but, did you later testify that you recognize
8 the gun that you saw as a shotgun?

9 A I don't remember.

10 Q You don't remember my specifically asking you a
11 few minutes ago?

12 A Yes, I remember that.

13 Q Did you make a description of the gun as being a shot-
14 gun, and do you also remember your answer being yes to that
15 particular question?

16 A Yes, I do.

17 Q So is it possible that the statement that we have from
18 the New Haven Police Department is a lot different from your
19 understanding at the present time, your recollection of the
20 events that took place and what you saw on May 3rd, 1974?

21 THE COURT: About what? Is it different about
22 what?

23 DEFENDANT SIMMONS: Is it different in the report,
24 the statement report, and what she know.

25 THE COURT: About what? You have to tell us what

McCarthy - cross

the question concerns.

DEFENDANT SIMMONS: Relative to description of the gun and not giving description of the gun.

THE COURT: The statement that you showed to her, she described it as a long gun, and you want to ask her whether her testimony is different than it being a long gun, is that --

DEFENDANT SIMMONS: She said in the statement that: "I can't describe the gun."

THE COURT: Other than to say it's a long gun.

DEFENDANT SIMMONS: Yes.

THE COURT: What is it you want to ask her about that?

DEFENDANT SIMMONS: I would like to find out whether the statement from this report, police report, is different from what the witness actually saw and which witness can remember took place in reference to the surmountable amount of contradiction of the witness today concerning the statement and the witness' testimony.

THE COURT: Your testimony is: it was a long gun?

THE WITNESS: When I described it as a long gun, I described it being a long gun as opposed to what a pistol would be. Now, this was my reason for saying it

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McCarthy - cross

was a long gun as opposed to what the size of a pistol, that it was not a pistol. It was a longer gun.

Q And you couldn't describe what type of long gun it was?

A No. I don't know that much about guns.

Q Then, again, you testified that you described it as a shotgun?

A I know at this time it's a shotgun. I knew it was not a pistol. I knew it was a longer gun, and this is why I described it as such in my statement to the police. I knew it was not a pistol.

Q Did the court produce evidence, to your knowledge, as far as a shotgun being involved?

THE COURT: Did what?

DEFENDANT SIMMONS: Did the court -- she said she know now it's a shotgun.

Q When was it that you arrived at the assumption that it was a shotgun? Was it after the policeman told you it was a shotgun?

A Nobody every told me it was a shotgun. Nobody ever came up to me and said they had a shotgun. After recollecting my thoughts and thinking about what I had seen, I knew that it wasn't a pistol, so it was a shotgun.

THE COURT: Let's try to understand. Are you

McCarthy - cross

using the word "shotgun" as simply another word for a gun that's not a pistol, or are you --

THE WITNESS: I probably -- I don't know that much about guns. I know the difference between a pistol and a shotgun, and I knew it wasn't a pistol.

THE COURT: By shotgun, you simply mean a gun that's not a pistol, that's longer than a pistol?

THE WITNESS: Longer and bigger type gun.

THE COURT: You are not trying to label which of several types of long guns it was, is that it?

THE WITNESS: No.

Q During the time the robbery was taking place, was you able to see the other customers in the bank at that time?

A Oh, yes.

Q Did you see other customers transacting business with tellers in the bank?

A Oh, yes.

Q And you also testified that you saw or heard a person behind a tellers' counter?

A No, I didn't say that. I said that I heard a shuffle in the lobby and I looked up, and that's when I saw the young man coming toward my desk.

Q During the time this person came towards your desk and ordered you to lie down and announce that it was a robbery, was

1 McCarthy - cross

2 you aware anytime that a robbery was taking place in the bank,
3 or you just thought this was a man who came in with a gun and told
4 everybody to get down?

5 A I certainly was aware that there was a holdup going
6 on because he said, "This is a holdup, everybody lie down."

7 Q Did this particular man, who said it was a holdup,
8 did you see this man move from his position?

9 A No. He stayed pretty much in the same place.

10 Q Did you see this particular man rob any people in the
11 bank, any of the customers?

12 A No.

13 Q Did you see this particular man take money from the
14 cash drawers?

15 A No.

16 Q So please tell the Court, how did you determine it
17 was a robbery taking place?

18 A Because he said so.

19 Q The fact that he said so, you felt that automatically
20 he could --

21 A At this time, I did see activity in the tellers'
22 section. I didn't see the man go over, but I did see activity.
23 I knew there was somebody at that time in the tellers' section,
24 but I didn't see him go over at the time he went over the
25 counter.

McCarthy - cross

Q Now, you also testified that you did not see any of the suspects rob or take money from any of the customers?

A No, I didn't.

Q Did any of the suspects in the bank robbery personally threaten any of the customers or yourself?

A The only thing the young man -- is when I turned around, I was lying on the floor, and he came around to look, and he said, "Don't look, you will get hurt." I don't know whether he was directing that at me or at everybody, but he did say this.

Q You were -- upon observing any individual entering the door, the first thing you observed was gun or the individual's face?

A I didn't see them come in the door.

Q Upon observing any individual approaching your desk, did you observe first the gun or the individual's face?

A I think probably I saw both of them.

Q You saw both. Which did you concentrate on the most, the gun or the face?

A I really don't know.

Q You did testify that the person that jumped over the counter from the tellers' section, that you didn't get a good look at the person's face because you was very frightened, is that correct?

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1 McCarthy - cross

2 A I didn't get a good look at --

3 Q The person who you testified to have jumped back across
4 the tellers' counter --

5 A I never said that I really got a good look at him.
6 I didn't. I knew it was a person jumping over, but I could not
7 identify this person.

8 Q The reason why you couldn't identify the person was the
9 reason because you were too frightened, and you really didn't
10 know how the person looked, is that correct?

11 A I could not identify this person that jumped over. I
12 saw a person jump over it, but I could not pick him out. I
13 couldn't identify him.

14 Q Did you give the New Haven Police Department a reason
15 that you didn't make identification, or you couldn't make
16 identification of the person who jumped back across the counter,
17 did you indicate at any time that the reason why -- because you
18 was so frightened?

19 A I don't remember. I might have, because I was.

20 Q You was very frightened?

21 A Of course.

22 Q During the time the robbery was taking place,
23 approximately how long, to your knowledge, did it take the
24 suspects to complete the robbery?

25 A Ten minutes.

McCarthy - cross

1 Q Ten minutes?

2 A Give or take a few minutes, maybe longer.

3 Q To your knowledge, how many tellers' drawers are
4 in the bank?

5 A I'm not certain. I would say probably eight, but I'm
6 not certain about that.

7 Q Eight drawers?

8 A Approximately.

9 Q And during that ten minutes, did it take to hold --
10 the ten minutes to get the people in the bank to lie on the floor,
11 or was the people on the floor about thirty seconds after
12 suspects came in the bank?

13 A This fellow that was in the tellers' section was over
14 the counter before the young man that was up at my desk began
15 shouting orders that this is a holdup and for everybody to lie
16 down. He was already in the tellers' section and going to the
17 tellers' drawers.

18 Q So you actually saw this person?

19 A I didn't know -- no, I didn't see him go over there,
20 over the counter, but he did go over the counter. You see, he
21 had to come to the back of the bank, he went over the counter
22 at the front of the bank, so, you see, he was over in the tellers'
23 section when the other fellow came up and was shouting orders for
24 everybody to lie down, and this was a holdup. So I would say
25

McCarthy - cross

that he was in the tellers' section for the entire time they were in the bank.

Q So, in other words, what you are saying is that before you observed this individual come up to you and gave the man -- and gave the demands that he did, that you testified he did, that you know that the person behind the tellers' counter was already over the tellers' counter?

A. I think he was, yes.

Q So, in other words, there was some --

A I didn't see him go over, but I think he went over the first thing.

Q There was some kind of indication to let you know that this person was over the counter before the person --

A I didn't look -- I did look up and I knew there was somebody in the tellers' section.

Q So the first time that you realized that a robbery was taking place, not when the person ran up to you and said, "This is a holdup, everybody on the floor," was when you knew that there was somebody in the tellers' cage?

A No, the first time I was aware there was a robbery going on was when the fellow approached my desk and said, "This is a robbery."

Q But before --

A In relation to the position where he went over into

McCarthy - cross

the tellers' section was at the front of the bank, so he, therefore, could be over the tellers' counter before this other fellow approached my desk.

Q So before the individual with the shotgun or long gun approached your desk, did you hear any commotion behind the tellers' cage?

A No, I didn't.

Q During the whole course of the robbery, was the customers on the floor and employees on the floor still on the floor, or did these people get up off the floor before the robbery was completed?

A No, they didn't get off the floor until the three men left the bank.

Q So, in other words, the people that was on the floor approximately ten minutes, eight to ten minutes?

A Right.

Q After being on the floor for eight to ten minutes, did you understand in your mind, fully in your mind, that the people who came into the bank, came to the bank to rob the bank and not the customers, or not you?

MR. CLARK: Objection, your Honor.

THE COURT: She already said what her understanding was about whether or not there was a robbery. I think that subject has been fully explored.

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McCarthy - cross

DEFENDANT SIMMONS: Judge, what I am trying to establish is that the witness said that she was frightened and wasn't able to identify the person who leaped back across the counter, but she did observe the person leap back across the counter. It's a possibility that she was not truly able to make a positive identification of the person who ran up on her with the gun, being she was frightened in both cases. I don't think that her frighteness was limited to certain areas of the particular robbery that she has indicated.

THE COURT: You have already asked her sufficiently about whether she knew there was a robbery, and you now have to move on to some other topic, if you want to continue cross examining. Just put another question if you have one. If you don't have one, then you are at an end.

Q Immediately after you saw the individual that you mentioned came back across the counter, immediately after this, did these people exit the bank, leave the bank at that time?

A Yes.

Q When these people left the bank, before they left the bank, did they injure any of the employees or customers in that particular bank?

McCarthy - cross

A. No.

DEFENDANT SIMMONS: No further questions.

THE COURT: Any redirect?

MR. WILLIAMS: I think I have a chance.

THE COURT: I think we ought to try to stay in order here.

MR. WILLIAMS: The usual procedure that we had been following before, as your Honor may remember, was that the person whose client was most directly involved with the testimony went first, and the others followed. If you prefer we follow a different order, we will be happy to do that, but this is the procedure we had been following during the pretrial hearings.

THE COURT: Well, all right. I will leave it to counsel for now and we will see how this works out.

Rawden - cross

CROSS EXAMINATION

BY MR. SIMMONS:

Q Officer Rawden, was you facing the door just before you saw an individual come into the door -- walk over to the office area and produce a shotgun, was you watching the door in order to see him come in?

A No, I wasn't.

Q Did you see this person enter the door of the bank? Is it possible that the person was already in the bank before you got in the bank?

A No, I didn't see him come through the doors.

Q When was it you first observed this individual that you said had produced a shotgun and in the office area of the bank?

A As he was walking towards the office area.

Q As he was walking toward --

A Yes.

Q So is it fair to say that this individual was approximately half way between the door and office area when you first observed him?

A Just about, yes.

Q Then, as a result of your observation of this person, this was prompted by you turning around and observing the individual?

Rawden - cross

1
2 A No, I don't understand.

3 Q In other words, when you first observed the individual
4 approaching the office area, was this the result of your turning
5 around to observe this individual?

6 A Yes, it was.

7 Q Did you at any time hear any commotion in the bank
8 that caused you to turn around?

9 A No, I didn't.

10 Q When you turned around to observe this individual,
11 did this individual had a shotgun in his hands at the time?

12 A No, he didn't.

13 Q Did you observe this individual all the way over to
14 the office area?

15 A No, I didn't.

16 Q So after you observed the individual walking to the
17 office area, you would then turn around and heard the individual
18 shout at a man, and then you turned around again?

19 A No, I didn't.

20 Q After the observing the individual -- when you first
21 observed the individual, what did you do then?

22 A I turned towards the doorway, and then towards the
23 teller.

24 Q You turned towards the doorway and towards the teller?

25 A Right.

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Rawden - cross

Q So if you turned towards the doorway and towards the teller, was it possible for you to see that individual reach the office area?

A No, it wasn't.

Q Was it possible for you to see that individual produce a shotgun from his coat?

A No, it wasn't.

Q Did you give the New Haven Police Department a statement relative to seeing that individual produce a shotgun from under his coat?

A I saw him lifting the shotgun up. Where it came from exactly, I could not tell.

Q You saw him lifting the shotgun up?

A Bringing it up with his arm.

Q In other words, the shotgun was already in his hands, so you don't know if he took it from out of a bag or if it was in the bank already, the only thing you know is he had a shotgun in his hand and he lifted it up, is that correct?

A Well, I didn't see any bag.

Q Excuse me?

A I didn't see a bag.

Q But the fact that you didn't see a bag and you didn't see the shotgun before you saw the individual in the bank with the shotgun, did you look around in the bank before you saw the

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Rawden - cross

individual come into the bank?

A No, I didn't.

Q Did you look into the office area before you saw the individual come into the bank?

A I might have.

Q Did you see a shotgun or any gun of any type lying on any of the desks or on the floor in any way in the office area?

A No, I didn't.

Q So you automatically assumed that this individual pulled his gun from under his coat?

A Yes, I did.

Q So this is a reason why you told the New Haven Police Department that you saw the individual pull the gun from under his coat?

A Yes, it was.

Q So if this is the case, the things that you didn't see, you just assumed took place, so this is what you told the New Haven Police Department what took place, because you didn't see it and you just wanted to make sure that you said that something took place?

THE COURT: What things? You can't ask him a question about the things that he testified to.

Q You also said that you saw an individual standing at

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1 Rawden - cross

2 the door with a revolver in his hands, is that correct?

3 A That's right.

4 Q Now, is it possible that you really didn't see that
5 individual standing at the door with a revolver in his hands,
6 but you just assumed --

7 A No, it's not possible.

8 Q Did you base any of your assumptions other than the
9 facts you base the assumption that the defendant pulled a shotgun
10 from under his coat?

11 A No, I didn't.

12 Q The statement that you gave New Haven Police
13 Department, did you give the New Haven Police Department that
14 statement on your own free will?

15 A Yes, I did.

16 Q Do you know at this time the name of the individual you
17 identified as being in the office area with the shotgun?

18 A Yes, I did.

19 Q What is that individual's name?

20 A Haskins.

21 Q Do you know at this time the name of the individual
22 who you saw standing at the door?

23 A No, I don't.

24 Q Did you testify seeing two other individuals in the
25 bank besides the person you said had the shotgun?

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Rawden - cross

1
2 A Yes, I did.

3 Q Do you know the name of any other individuals today,
4 even if you received a reference from a newspaper or received
5 a reference through the individuals in court today as defendants,
6 do you know the name of any other individuals you describe as being
7 in the bank?

8 A No, I don't.

9 Q Do you know my name?

10 A No, I don't.

11 Q Can you place my face with the person being in the
12 bank that particular day?

13 A No, I can't.

14 Q Did you tell the New Haven Police Department that the
15 person behind the tellers' counter took money from all of the
16 tellers' drawers?

17 A Can you repeat that, please?

18 Q Did you gave a statement to the New Haven Police
19 Department relative to the person you saw behind the tellers'
20 counter taking all -- taking money from all of the tellers'
21 drawers, or you just assumed that he took --

22 A No, I saw it being done.

23 Q You saw --

24 A Not every single teller.

25 Q Did you gave the New Haven Police Department a statement

1 Rawden - cross

2 relative to seeing that individual take money from every
3 tellers' drawer?

4 A Yes, I did.

5 Q In other words, you gave the New Haven Police
6 Department that information because you assumed that he took
7 money from all the tellers' drawers?

8 A Yes, I did.

9 Q Is it any other testimony that you gave the New Haven
10 Police Department or any other testimony that you have given to
11 this court is based on assumption other than the two that
12 we just discussed?

13 A Not that I know of.

14 Q Was you personally threatened by any of the individuals
15 in the bank?

16 A In what way?

17 Q Did any individual indicate in any way that they might
18 want to kill you, take some money from you?

19 A Can you be more specific?

20 Q In other words, did you feel at any time during the
21 course of this subsequent bank robbery that your life would be
22 taken by any of these individuals, or you would be robbed by
23 any of these individuals?

24 A Yes.

25 Q Did they indicate at any time that they was planning on

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Rawden - cross

1
2 robbing the customers, or did they just state that this is a
3 holdup, or this is a robbery?

4 A They just stated that this was a robbery, a holdup.

5 Q During the course of the bankrobbery, did you see any
6 of the customers or any of the employees personally getting
7 robbed by suspects in the bank? Did you see any suspect take
8 money from the customers or the employees, purse, pocket or
9 money that they might have had in their hands, or take any
10 watches or any rings, any type of valuable from customers
11 or employees of the bank?

12 A No, I didn't personally see that.

13 Q Did you see any of the suspects in the bank inflict
14 the injury on any people in the bank?

15 A No, I didn't.

16 Q Is it fair to say that the reason why you thought or
17 you assumed that the people who were conducting the
18 expropriation was going to bring injury to you because you have
19 never been a witness to a bank robbery before?

20 A Yes, that's true.

21 Q You did testify that after the individual with the
22 shotgun gave orders for people to lie down, that it was a holdup,
23 that you got into a kneeling position?

24 A Yes, that's right.

25 Q When you got in the kneeling position, was you facing

Rawden - cross

the door, were you facing the rear of the bank, or were you facing the tellers' counter?

A I was facing the office area.

Q You were facing the office area?

A Yes.

Q And you was facing the office area throughout the completion of the robbery?

A Yes, I was.

Q You did not at no time cover your face?

A Completely, no.

Q You did not at no time look to the rear of the bank?

A Yes, I did.

Q Approximately how long did it take the people to complete the expropriation?

A No more than a few minutes.

Q A few minutes. Would you say it was about two minutes, three minutes?

A About four, maybe five.

Q Four or five minutes?

A Yes.

Q Did you make photo identification of the suspect?

A Yes, I did.

Q Did you make that photo identification on the same day of the subsequent--

Rawden - cross

A No, it was the next morning.

Q The next morning?

A Yes, it was.

Q Did you have occasion to see newspaper before you made --

A No, I didn't.

Q You didn't?

A No.

Q Did you discuss the events of that day with anybody before you made that photo identification other than a police officer?

A No, I didn't.

Q You didn't discuss it with any family member or any friends of yours?

A We were told in the bank not to by the police.

Q Did you see any of your family or friends before you made the photo identification?

A Yes, I did.

Q You didn't even mention it to them that you was a witness to a bank robbery?

A No, I didn't.

Q You made one photo identification? One?

A Yes, one positive identification.

Q One possible --

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1 Rawden - cross

2 A One positive.

3 Q Did you make identification of the individual who
4 you mentioned was standing at the door?

5 A No, I didn't, not a positive identification.

6 Q You made a similar -- you did pick out a photo that
7 had -- that looked similar to the person standing at the door?

8 A Yes, I did.

9 Q Do you recall which of the defendants in this courtroom
10 relative to the photo that you picked out similar to the person
11 standing to the door, which defendant in this court does that
12 similar ID indicate?

13 THE COURT: You can answer that question. The
14 question is, as I understand it: Are you able to
15 recall which of the people, or which person is the
16 person whose photo you said was similar? Are you able
17 to do that?

18 THE WITNESS: No, I'm not.

19 Q Did you also give the statement to the New Haven Police
20 Department on the same day that you made the photo identification?

21 A Yes, I did.

22 Q Did the photo identification processing seem suggestive
23 to you?

24 A No, it didn't.

25 Q You did not see any identification on the face of the

1 photo that might be suggestive to you being able to identify it
2 and the people indicated?

3 A Could you repeat that, please?

4 Q In other words, you did not see anything on the face
5 of the photo that you would suggest or would suggest that a
6 particular individual might be a suspect of the expropriation?

7 A No, I didn't.

8 Q When was it that -- when was it, to your knowledge, did
9 you establish in your mind a -- form an opinion in your mind
10 concerning the events that took place in New Haven Savings Bank
11 on May the 3rd before you made ID identification?

12 THE COURT: When was it that he formed an
13 opinion about what?

14 DEFENDANT SIMMONS: Events of what he seen in the
15 bank.

16 THE COURT: In what way?

17 DEFENDANT SIMMONS: In a way that it might
18 influence or encourage you to want to make an
19 identification of at least one suspect.

20 THE COURT: You mean, is your question at what
21 point did he feel he was able to recall what one of
22 the suspects looked like?

23 DEFENDANT SIMMONS: Did he form an opinion in his
24 mind of the event that took place, and did this
25 opinion have any influence on his ability to --

1 Rawden - cross

2 THE COURT: We are not interested in his opinions.
3 We are interested in whether he has observations.

4 DEFENDANT SIMMONS: What I was trying to bring out
5 to the Court, that it's possible that there could have
6 been some outside or foreign influence that might
7 entice the witness to make a photo identification.

8 THE COURT: You can ask him, did anyone influence
9 him to make an identification. Is that what you want
10 to know?

11 Q Did anything influence you to make a photo identifica-
12 tion?

13 A No, nothing did.

14 Q During the time you was in a kneeling position, was
15 you able to observe the person at the door?

16 A In what way?

17 THE COURT: Are you asking now about a person that
18 he did not identify?

19 DEFENDANT SIMMONS: He did say he observed two
20 other people entering the bank.

21 THE COURT: He observed them, but he has said he
22 could not identify the person at the door, so I don't
23 think we have to go any further on aspects of that person
24 where he can't make an identification. He has been
25 questioned a good bit about what he saw that person

1 Rawden - cross

2 do and where he was.

3 DEFENDANT SIMMONS: Judge, I'm trying to base my
4 questioning on drawing out the witness' credibility in
5 making identification of any suspect in the bank
6 relative to him not being able to make a positive
7 identification. Now, I think in the pretrial hearing
8 he was surrounding -- was surrounding a particular photo
9 identification, and I think that you also brought out
10 to me that we restrict the questions for identification,
11 but in the actual trial we would be able to ask questions
12 along the lines of any event that he seen taking place
13 within the bank.

14 THE COURT: That's correct, and that's why I have
15 permitted extensive questioning about whatever he saw,
16 but we are not going to have now a further exploration
17 of what he saw about a person who he can't identify.
18 We have already had enough on that subject.

19 Is there anything else you want to inquire about?

20 Q You did identify your picture on these particular
21 photos?

22 A Yes, I did.

23 Q Would this be you here with the individual with his
24 hands over his face?

25 A It's not over my face, it's like this.

Rawden - cross

Q So if this is your photo here, the office area would be facing this direction, would it?

A I don't get what you mean.

MR. CLARK: I am having trouble hearing both Mr. Simmons and the witness.

DEFENDANT SIMMONS: Relative to the photo here, we have the witness who identified his picture on this particular photo, and there is one instance where the individual on the photo has his hands over his face.

THE COURT: What are you asking him?

DEFENDANT SIMMONS: I'm asking the witness to further verify that this is his photo with his hands over his face.

A It's not over my face. It's on the side of my head.

Q The second photo, you did identify a picture of yourself in this particular photo?

A Yes, I did.

Q Would this picture be the individual sitting in a kneeling position with his head turned to one side, is that individual you?

A Yes, that's me.

Q Now, in the direction that you are pointing your head, is this the rear of the bank?

A No, that's towards the office area.

Rawden - cross

1
2 Q That's toward the office area?

3 A Yes, it is.

4 Q So this is toward the office area, where would the
5 door be indicated?

6 A That door is approximately right here.

7 Q The door is -- the door is this way?

8 A Yes.

9 Q It's behind --

10 A To the side of me.

11 Q In other words, like you were pointing toward the
12 office area, so the door would be in the opposite direction of
13 which you were pointing?

14 A No, it's to the side of me.

15 Q Did you notice --

16 A The office area is not directly to the back of the bank.

17 Q If you notice, your head is pointing --

18 A To the side.

19 Q To the side?

20 A Right.

21 Q And you have your back to the tellers' counter?

22 A Yes, that's true.

23 Q Is this the rear of the tellers' counter, or is this
24 the front of the tellers' counter, the part of the tellers'
25 counter that's immediately in front of the door, or this is the

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Rawden - cross

end of the tellers' counter?

A I don't get what you mean.

Q In other words, this particular part of the tellers' counter that you see, is this the beginning of the tellers' counter from coming into the door, or this is the far end of the tellers' counter, if you start from the door and go directly to the tellers' counter?

A It's the beginning of the tellers' counter.

Q So if this is the beginning of a tellers' counter, the door would probably be in this particular area, right?

A That's true.

Q So you would be looking away from the door?

A No, I wasn't. My head was to the -- at an angle to the door. I wasn't directly looking away from the door.

Q Is it fair to say from viewing this particular photo, you would not be able to see the door at no time in this particular position?

A Yes, I was able to see the door.

THE COURT: Anything else, Mr. Simmons?

DEFENDANT SIMMONS: I think there is a contradiction between what--

THE COURT: Put your next question.

DEFENDANT SIMMONS: -- between what the witness sees in the photo and what's actually in the photo.

1 Rawden - cross

2 THE COURT: Put your next question.

3 DEFENDANT SIMMONS: I would like to remind
4 the Court, also --

5 THE COURT: Please, just ask a question.

6 DEFENDANT SIMMONS: I have a question to ask you
7 relative to the proceeding here, Judge Newman.
8 Would you be patient long enough to let me finish what
9 I have to say?

10 THE COURT: You need not raise your voice. We have
11 a witness on the stand and we have a jury in session,
12 and we are going to endeavor to conclude his examination.
13 If you have something to take up with me out of the
14 presence of the jury, we will do that at another time.
15 Right now, all I would like you to do is put any
16 additional questions to this witness that you have,
17 and if there are any other problems, we will take them
18 up at another time.

19 DEFENDANT SIMMONS: Now, the situation that I was
20 about to pursue is that, relative to my lack of
21 knowledge of the U. S. Court procedures, is there a
22 certain way, a certain procedure that other people can
23 view this particular photo to resolve the contradiction
24 existing between my questioning and the answer of the
25 witness on this particular photo?

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Rawden - cross

THE COURT: If you are having any difficulty knowing how to question him, and it hasn't seemed to me you are, Mr. Clifford is available to give you advice on any topic.

DEFENDANT SIMMONS: Just a minute.

(Discussion off the record.)

Q Did you have an interview with any government official or any officer personnel of this country to encourage you to make the testimony concerning identification of people who was a part of this expropriation?

A I don't understand the question.

Q In other words, did you have a conversation with any government official or any personnel of this country in which the gist of that particular conversation was to encourage you to give statements to the court or give testimony to the court in order to present evidence against people who are accused in expropriation?

A Can you be more specific?

Q Did any government official or any police officer, local armed force personnel, police officer, encourage you in any way to submit information contributing to identifying any people who allegedly was in the expropriation?

A No, they didn't.

Q Did you feel that you, as a peace-loving people, should

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Rawden - cross

make an identification of a suspect, even though you didn't really see a clear-headed description of any of the suspects?

THE COURT: He wants to know -- do you understand the question?

THE WITNESS: No, I don't.

THE COURT: Did you feel you should make an identification of someone, even though you weren't able to get a good look at them and make an identification?

THE WITNESS: No.

Q Did you feel that you should have made an identification of a suspect because you felt that it was part of your interests to do such?

A No, I didn't.

Q Did you feel the reason why you should make a photo identification because you felt that it was the right thing to do, not because you was basing on a clear-headed description, but you felt it was the right thing to do as a peace-loving people?

A I don't see where that has anything to do with it.

Q I would like for you to answer the question yes or no.

A Please repeat it and be more specific.

Q In other words, did you make an identification of the suspect because you felt it was the right thing to do, other than because you got a clear-headed description of a particular suspect?

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1 Rawden - cross

2 THE COURT: I don't understand the alternatives
3 you are putting to the witness. If you want to ask
4 him was his identification based on what he saw, you
5 can ask him that. Was your identification based
6 on what you saw?

7 THE WITNESS: Yes, it was.

8 Q Did you know at the time you gave a statement to the
9 police or the time you made the photo identification that you
10 was being used at the police department, you was used by the
11 police department as an informer?

12 THE COURT: There is no basis in the record for
13 that. Do you mean, was he to be a witness, is that
14 what you mean?

15 DEFENDANT SIMMONS: Yes, in other words --

16 Q -- did you realize that by being a witness in this
17 particular case, that you would consciously or unconsciously
18 playing the part of an informer?

19 THE COURT: There is no basis for that. You can
20 ask him if he understood whether he was going to be
21 a witness. Are you trying to ask him was he being
22 paid to give testimony? Is that what you want to know?

23 DEFENDANT SIMMONS: No, not exactly.

24 THE COURT: Let's move on to something else if
25 there is anything else you have not covered.

Rawden - cross

Q Did you feel that you had to make a positive identification of some person because the suspects were black?

A No, I didn't.

Q Do you think that prejudice had anything to do with your ability to make an identification of any suspect?

A Please repeat that.

THE COURT: He wants to know whether prejudice had anything to do with your ability to make an identification?

A No, it didn't.

THE COURT: Anything else, Mr. Simmons.

Q After the suspects left the bank, did you observe any of the customers or any of the employees having a wound or having any kind of wound inflicted on them from the suspects of the bank robbery?

A No, I didn't.

Q Do you think that because you might have been very frightened that this might have had something to do with your ability to make an identification?

MR. CLARK: I object to that. He did make an identification.

THE COURT: Sustained.

Q Was you very frightened during the course of the robbery?

A Not extremely, no.

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Rawden - cross

Q Did you think at any time that your life was in jeopardy?

A At first.

Q Did you think before you made the photo ID that the people indicated in the robbery or in the expropriation were criminals?

A Repeat that, please.

Q Did you think in your mind before you made the photo identification that the people indicated in the expropriation were criminals?

A Before or --

Q Before and after.

A Well, before, I never seen them before.

Q After?

A Yes, I did.

Q Do you still believe today that those people indicated are criminals?

A Which people?

Q The people you said you saw making expropriation?

A The person I said I saw?

Q Yes.

A Yes.

Q This is solely the reason why you made a testimony and made identification because you thought that the person was a criminal? Right?

Rawden - cross

A That's not the sole reason.

Q What was the reason?

A Because I was asked to testify.

Q If you were asked to testify against the interests of the people and you know that it is the interest of people, would you do such?

A What people?

Q The people in general. The poor people. Black people.

THE COURT: Mr. Simmons, we are going well beyond the proper scope and time of cross examination, and we are not going to have a philosophical discussion with the witness about things of that sort.

Anything else that has to do with his examination?

DEFENDANT SIMMONS: I'm trying to establish the credibility of the witness being able to truly and honestly make a positive identification. That's all I'm trying to do.

THE COURT: You have had ample time to do that, and you have spent a lot of time doing that, and unless there is something new, your examination is at an end.

DEFENDANT SIMMONS: I don't think my cross examination is unusually long, as far as cross examination is concerned. I think the basic thing is to establish certain facts.

1 Rawden - cross

2 THE COURT: Do you have any other area to bring
3 out?

4 Q Did you think before you made photo identification
5 that the people indicated or the person indicated in the
6 expropriation was against your interests?

7 MR. CLARK: Objection, your Honor.

8 THE COURT: That the person was against his
9 interest?

10 DEFENDANT SIMMONS: Yes.

11 THE COURT: He has given testimony to a person
12 coming in with a gun.

13 DEFENDANT SIMMONS: If the person had felt
14 strongly that the people indicated was against his
15 interests, this would have motivated him more.

16 THE COURT: He already told you what the
17 circumstances that he observed were in the bank.

18 DEFENDANT SIMMONS: I was under the impression
19 that the reason for cross examination was to make sure
20 that the witness recollected the whole event that
21 took down.

22 THE COURT: I understand your point. Mr. Simmons,
23 do you have any other question? If you have another
24 question, ask it. If you don't, then your examination
25 is at an end.

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Rawden - cross

Q Would you consider the people indicated in expropriation to be enemy of the people?

THE COURT: That's a repetition of areas you have been pursuing for some time, and that's enough.

DEFENDANT SIMMONS: No further questions.

THE COURT: Anything else of this witness?

MR. CLARK: No, your Honor.

FURTHER CROSS EXAMINATION

BY MR. WILLIAMS:

Q I believe, sir, that you told Mr. Simmons that you were testifying because you were asked to do so, is that correct? Or did I not hear you correctly?

A Yes, I was asked to do so.

Q You consider it to be one of your duties as a citizen of this country, do you not, to come to court and testify when asked to do so by the prosecution?

A I don't get what you're trying to --

Q You indicated that you testified -- you were testifying because you had been asked to do so. Do you mean by that -- you mean by that, do you not, that you consider it one of your duties, one of your obligations as a citizen to come to court when you are asked to testify by the government in a criminal proceeding?

A Well, not just by the government.

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1 Rawden - cross

2 Q I understand that. In fact, that's among your duties,
3 the way you see it?

4 A Yes, the way I feel.

5 Q In fact, you feel, do you not, that there are many
6 duties which citizenship imposes, some which may not be pleasant,
7 but one does what is necessary in order to fulfill one's
8 obligations as a citizen and as a human being.

9 MR. CLARK: I object on the ground it's a speech
10 and not a question.

11 MR. WILLIAMS: I didn't think it was a speech.

12 THE COURT: You want to know does he consider
13 it among his duties. He told you he does. Is there
14 something else?

15 Q You felt the same way, did you not, with respect to
16 going down to the police station when they asked you to come
17 down and discuss the case with them, it was one of your duties
18 as a citizen, isn't that true?

19 THE COURT: You had a full opportunity to question
20 him about the police station.

21 MR. WILLIAMS: This was brought out after I
22 was through with my cross.

23 THE COURT: This is scarcely a new area --

24 MR. WILLIAMS: It wasn't in existence at the time
25 I questioned him, Judge.

1 Rawden - cross

2 THE COURT: It's just inconceivable that you
3 could not have probed this witness along this line.
4 Is there something you want to develop?

5 MR. WILLIAMS: You won't let me question on
6 that area, either.

7 THE COURT: The particular question you have
8 asked need not be pursued. Is there something else?

9 MR. WILLIAMS: I guess not, if I can't question
10 in that area. Thank you, your Honor.

11 THE COURT: Anything else of this witness?

12 You are excused. Thank you.

13 (Witness excused.)

14 THE COURT: I will excuse the jury at this time
15 for a brief midafternoon recess. We will resume
16 in about ten or fifteen minutes and continue until 5:00.
17 Jury may be excused.

18 (Jury excused at 4:22 p.m.)

19 THE COURT: Let's be clear about something, Mr.
20 Williams, we are not going to use successive cross
21 examination to simply go over anything that happens to
22 come up in a previous examination. If a new fact is
23 developed that was not fairly to be anticipated and
24 needs some probing, that's one thing, but we are not
25 going to simply go over general attacks on credibility

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1 just because another cross examiner makes an attack on
2 credibility. That's not the purpose of successive cross examina-
3 tion.

4 MR. WILLIAMS: It was my understanding, your Honor, of
5 the rules of evidence that if on cross examination by another
6 attorney, a new area relevant to credibility was opened up for
7 the first time, that then the attorney for some other defendant
8 had the right to explore that when his turn came around again.
9 I thought that rule had always been followed in the courts of
10 a free people.

11 THE COURT: Well, we are not going to do it in terms
12 of areas. It's far too elusive a concept, and it's going to
13 keep us here forever. There's obviously been a good bit of
14 protracted cross examination, so I simply want you to understand
15 now if you are going to cross examine on general grounds of
16 credibility, that you ought to do it when your turn comes.
17 If something really new comes up that you have not had a fair
18 chance to go into, that's something else again, but not just
19 general issues of credibility, those are fully available to you
20 on your first turn.

21 MR. WILLIAMS: I didn't think, and still don't, that
22 I had violated the rule you have just expressed, but I will do
23 my best to adhere to your ruling.

24 THE COURT: Take a short recess.

25 (Recess taken.)

1. Tokarz -- direct

13

MR. CLARK: No further questions.

14

THE COURT: Is the system being changed again?

15

MR. WILLIAMS: Yes. We decided during the

16

recess upon a firm policy which we will follow in all

17

cases to avoid confusion in the future. Mr. Simmons

18

will be the first to cross examine in every case.

19

THE COURT: I don't think that's the order that I

20

am going to entertain. If counsel want a firm order,

21

which I think I agree with you as a useful way, it

22

would be far more helpful to the Court to have the

23

initial examination be done by someone who is a member

24

of the Bar, because I think that's the most likely way

25

to have an expeditious handling of it, so you can

1 Tokarz

2 resume your seat, Mr. Simmons, and we will then revert
3 to the order we had used, which, I guess, makes Mr.
4 Williams first up.

5 MR. WILLIAMS: If it please the Court, I note
6 it's ten to 5:00, and in view of your Honor's ruling,
7 I would ask that we suspend for the day, because it's
8 going to require some consultation among counsel, and
9 it's also going to require the submission of probably
10 some briefs to the Court. I don't believe there is
11 any authority for your Honor's ruling. I think it's
12 unfair.

13 THE COURT: I will look at your briefs when I
14 get them. Until then, you may cross examine now if
15 you wish to. Do you have any cross examination, Mr.
16 Williams?

17 MR. WILLIAMS: I'm having a consultation. I
18 hadn't expected that I was going to be first. If it
19 please the Court, I'd think the fairest would be the
20 order they ave listed in the indictment, rather than
21 arbitrarily put me first.

22 THE COURT: I am not arbitrarily putting you
23 first. I am putting you first, because, unlike one of
24 the other cases we have got here, you are a member of
25 the Bar and one of the other defendants is not, and

1 Tokarz - cross

2 that's why I'm not going to proceed with him. If you
3 and Mr. Rosen have a difference as to who should be
4 the initial cross examiner, I will be glad to order
5 that in any way you like.

6 MR. WILLIAMS: I will, as I always do, submit to
7 your Honor's ruling, but would like the record to note
8 I do so under protest. I think this is extremely
9 unfair to all the defendants in the case.

15 MR. WILLIAMS: If your Honor please, there is one
16 other matter I would like to take up apropos of our discussion
17 at the end of the business yesterday. I would like to propose,
18 if your Honor will permit, that I be permitted in all cases to
19 be the last person to cross examine. I understand your Honor's
20 feeling that you want an attorney to go first in cross examination.
21 I think for the same reasons I am very concerned on -- as far as
22 doing my duty to my client is concerned, that I have an
23 opportunity to cross examine after Mr. Simmons, because areas
24 have a tendency to get opened up during his cross examination
25 with witnesses which I feel I have a duty to my client to go into

1 to some extent in order to resolve whatever problem may have
2 developed during the course of that.

3 Therefore, I would respectfully request permission to
4 cross examine last of the three. If Mr. Rosen goes first, that's
5 fine as far as I'm concerned.

6 THE COURT: It seems to me that's still not an
7 appropriate way to handle a pro se defendant, to have him under-
8 take to open up things in advance of lawyers who are trained to
9 handle cross examination, who have a far more sophisticated sense
10 of relevancy. It seems to me it puts -- it's an imposition
11 on the pro se defendant, and I think it's inappropriate for the
12 Court, for lawyers, to try to position themselves in the line of
13 cross examination after an untutored, untrained pro se
14 defendant.

15 MR. WILLIAMS: What we are trying to do is position
16 ourselves on both sides of the untutored pro se defendant in
17 order that our clients may be fully protected from any problems
18 which may accrue to them.

19 THE COURT: Your clients will be fully protected by your
20 making a cross examination, whether Mr. Simmons was in the case
21 or not. You don't need added protection because he cross
22 examines.

23 MR. WILLIAMS: If your Honor please, I think that the
24 record in this case is clear that new areas have been opened up
25 by pro se cross examination.

1 THE COURT: If there is something that on which you
2 are entitled to pursue, you will be allowed to pursue it, no
3 matter what the order is.

4 MR. WILLIAMS: The problem is, quite frankly, as I
5 understand the Court's ruling yesterday, when areas that are
6 opened up that may be potentially damaging, the Court does not
7 permit us to go back into those areas if it's an area that's
8 been touched upon --

9 THE COURT: I heard nothing yesterday that was brought
10 out by Mr. Simmons that was damaging to your client. If you
11 thought there was something damaging in the way he cross
12 examined, you, of course, were free to object, and I heard no
13 objection from you in the course of his examination.

14 MR. WILLIAMS: If it please the Court, I think that as
15 a practical matter, the Court is placing an intolerable burden
16 on the codefendants in this case by not allowing counsel to
17 both procede and follow. If the Court so rules, the Court so
18 rules, but I think that anybody who has ever tried a case knows
19 the kind of problems we can get into here and knows that it's
20 simply not sufficient for counsel for one codefendant to stand up
21 and object when somebody on behalf of another codefendant is
22 asking a question.

23 THE COURT: It happens all the time. There is nothing
24 novel about that at all. If you prefer not to, that's your
25 choice, but it happens all the time.

1 MR. WILLIAMS: I certainly think that the Court has
2 the power to allow counsel to precede and follow, I think there
3 is no excuse for failing to do so, that would be recognizable
4 in the law.

5 THE COURT: You will have to give me some law opposed
6 to it before you assert general proposition of what the law --

7 MR. WILLIAMS: We understand why the Court won't allow
8 it.

9 THE COURT: I won't allow it because I believe it to
10 be in the best interests of the pro se defendant, to have cross
11 examination opened up initially by those trained in the law in
12 an effort to expedite the matter and to keep the cross examination
13 relevant and to minimize prejudice to all concerned. Those
14 are my reasons. I will allow counsel who are members of the
15 Bar to agree among themselves which one will precede the other,
16 but both will precede the pro se defendant. I think that's far
17 the preferable course, and I think the experience has
18 demonstrated that.

19 MR. WILLIAMS: I strenuously object.

20 MR. ROSEN: I join in Mr. Williams' objections, and
21 essentially on the basis of them, on behalf of Mr. Alston, I
22 move for a mistrial.

23 MR. WILLIAMS: I move for a mistrial.

24 THE COURT: Motion denied.

25 MR. WILLIAMS: I move for a severance.

1 THE COURT: For what reason?

2 MR. WILLIAMS: For the reasons which I have explained
3 in my argument --

4 THE COURT: Because of the order of cross examination?

5 MR. WILLIAMS: Because your Honor's ruling with respect
6 to the order of cross examination, in my judgment, makes it
7 impossible for the defendant I represent to obtain a fair trial
8 in a joint situation.

9 THE COURT: The motion for severance on that ground
10 is denied.

11 MR. ROSEN: Your Honor, I join in that motion, as well.

12 THE COURT: The motion is denied as to your --

13 MR. ROSEN: Rather than joining in, I make it on
14 behalf of my client.

15 THE COURT: It's denied as to your client, as well.

16 Are we ready to resume with the witness?

17 MR. WILLIAMS: If it please the Court -- I'm sorry.

18 DEFENDANT SIMMONS: Your Honor, as far as the cross
19 examination, I prefer to cross examine first, and if there is any
20 situation concerning laws of the constitution or statutes or what
21 not that prohibit my cross examining first, I would like to know
22 it, if I would be violating the law by asking, you know --
23 request other than for you to just brush it aside and say, "I
24 don't feel like dealing with this in a particular way." I feel
25 that you should deal with it. If you are going to continue to

1 preside as a judge in this particular case, you should deal
2 with it from the laws that you claim to uphold and not through
3 out of personal feelings and what not. The fact that you are
4 dealing with personal feelings, show that you have a personal
5 interest in the case, and I don't have time to submit a motion
6 in a proper way, the way you said it and merit and the way you
7 said it, but if you do have such a strong feeling in the case,
8 if you feel you can't deal with it in an impartial way, you
9 should consider disqualifying yourself from this particular case.

10 THE COURT: Well, apparently you are raising two
11 problems. I will deal with the second one first.

12 I have explained to you, as far as the issue of
13 disqualification of a judge, there is a way to present that
14 formally. If you don't think you have the time to do it, that's
15 your decision. You have, as far as I can see, both the time and
16 the availability of trained counsel to assist you.

17 To the extent you are making it orally, again, I will
18 deny it again as being insufficient.

19 To the extent you, too, are raising the question of
20 the order of cross examination, I have indicated the reasons
21 on the record for my decision. In answer to your question: is
22 there a statute that prohibits you from going first, as far as
23 I know, there is not. I think the order of cross examination is
24 well within the discretion of the trial judge, and I have given
25 the reasons why I have exercised my discretion to have counsel

1 DIANE TLOKARZ, resumed.

2 THE COURT: Mr. Simmons, do you have additional
3 cross examination of this witness?

4 CROSS EXAMINATION CONTINUED

5 BY DEFENDANT SIMMONS:

6 Q You did testify that the only robber that you saw or
7 the only person that you saw in the bank expropriating money was
8 the one that you described?

9 A Could you repeat that?

10 Q The person that you described -- seen in the bank was
11 the only person, to your knowledge, that was in the bank?

12 A Besides customers and bank personnel, yes.

13 Q So it's fair to say that you only heard the voice of
14 the person who you described?

15 A I heard a voice, and then when I looked up, I saw the
16 person. I didn't see him talking, but that was the direction
17 the voice was coming from.

18 Q After you heard the voice, like immediately after you
19 heard the voice, did you immediately get to the floor?

20 A No, I looked up.

21 Q You looked up. Then the person mentioned that he wanted
22 everybody to get to the floor, and no one wouldn't get hurt.
23 Did you see this as a direct threat to your life, or did you
24 view the situation as a person trying to protect everybody in the
25 bank against being used by the government?

Tokarz - cross.

A No, I took it as a threat, because we were told if no one looked, they would not be hurt.

Q Did you hear or read anything about this particular case as of the date since the event took place on May 3rd, 1973?

A You mean did I read the newspapers after that?

Q Yes.

A Yes.

Q Did you at any time read any of the accounts of testimony of other witnesses in this case?

A Yes.

Q Did you hear about or read anywhere of any other witnesses who looked at the people in question, or the person in question, even after they were told not to look?

THE COURT: Are you talking about looking in the bank?

Q Look at the person with the gun, after the person said: well, don't look or -- don't look and no one won't get hurt, did you see anywhere in the paper or hear anywhere, word by mouth or heard anywhere in the media that there were any person in that bank or there were testimony in this particular case indicating that there was some people in the bank who looked even after they were told not to look?

A Yes, I did. There were other people that looked the same thing I did. After they heard the voice, they looked up.

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1 Tokarz - cross

2 Q Now, was there indication of these people getting
3 shot, even after they looked when they were told not to look,
4 or they were pistol whipped or slapped around or pushed around,
5 or did you hear any indication of any person being even touched
6 in a forceful manner, or even being pushed in any way to move
7 from one area to another?

8 A Well, considering I was on the floor behind the counter,
9 I couldn't see anything, or I didn't look to see anything else that
10 was going on.

11 Q Speaking in reference to what you heard through the
12 news concerning testimony of other witnesses in this particular --

13 A No, I haven't heard anything.

14 Q Do you think that your belief that the people who
15 participated in the expropriation on that particular date were
16 criminals and this encouraged you to make testimony and make an
17 ID identification?

18 A I'm sorry, I don't understand.

19 Q I said: do you think that your belief that the people
20 who participated in the expropriation on that particular date had
21 anything to do with your ability to make identification or to
22 testify in behalf of the government, or did you -- yes, that's the
23 question. Do you understand the question?

24 A I'm not sure.

25 THE COURT: He wants to know whether, if you have

1 Tokarz - cross

2 a view that those who came into the bank were criminals,
3 did that view, if you had it, influence your testimony?

4 THE WITNESS: Well, at the time, I didn't know if
5 anybody had a record. All I know, these men came in
6 the bank, so it didn't influence my testimony at all.

7 Q Did you make a photo identification on the same day?

8 A No, I didn't.

9 Q Did you give a statement to the police on the same
10 day of the expropriation?

11 A Yes, I did.

12 Q Did you give any other statements to the policemen
13 after that first day?

14 A When the FBI man came in that Tuesday, I think it was a
15 Tuesday or Wednesday, I talked to him.

16 Q Did you read the papers concerning that particular event
17 on May 3rd before you made the photo identification?

18 A Yes.

19 Q Did you see in the papers that the suspects that were
20 captured who allegedly took part in the expropriation were members
21 of the Black Liberation Army?

22 A Yes.

23 Q Do you think that this influences you in any way as
24 far as making some kind of photo identification?

25 A No, it didn't.

1 Tokarz - cross

2 Q Did you know before you made the photo identification,
3 or do you know today, that the Black Liberation Army arise from
4 the oppression of the black people?

5 A I haven't read up on the Black Liberation, so I
6 really don't know what their purpose is.

7 Q Do you think that if you had a clear-headed understanding
8 of the principles that the Black Liberation Army functions on, and
9 that principle relates only to regaining peace throughout the whole
10 world, that it would have any other effect on your ability to
11 testify in behalf of the government?

12 MR. CLARK: Objection.

13 THE COURT: Sustained. You can't ask her to
14 assume something that she doesn't know and then ask her
15 what effect that would have.

16 Q Do you understand that the banks is the nerve center
17 of this particular country?

18 A I never thought about it.

19 Q Do you think that if you had known that as a fact, that
20 you would reconsider --

21 THE COURT: It's the same problem. You are asking
22 her to assume something else.

23 Q Do you understand that in this particular case, that
24 the banks and the government is the real villain and the people
25 who are accused is the victim?

1 Tokarz - cross

2 MR. CLARK: I will object before we go any
3 further.

4 DEFENDANT ALSTON: He cut him off.

5 THE COURT: We don't need your assistance, Mr.
6 Alston, at this point.

7 DEFENDANT SIMMONS: I will change my line of
8 questioning.

9 Q Did you think before your -- before you made the photo
10 identification that the people who allegedly made the expropriation
11 meant you no harm and what not, and that these people looked at
12 you as they look at themselves, as peace-loving people of the
13 world, and their only intention was to level a blow against a
14 cornerstone of the capitalist system?

15 A I had no way of knowing that. All I know I was afraid
16 when people came in and I took it as a threat against my life.

17 Q Do you think that your indoctrination concerning
18 racism had anything to do with your fear of the people that came
19 into the bank?

20 A No.

21 Q Do you think that the only reason that you feared the
22 people, because you didn't know anything about them and the
23 fact that they had guns in their hands?

24 A I feared them because they came, you know -- what I had
25 seen was the man with the gun saying if you didn't look, no one

Tokarz - cross

would be hurt.

Q And also you did testify that you didn't hear of anybody in the bank getting brutalized or even touched?

THE COURT: You asked that. We have been over that. Let's move on.

Q Do you think that you would have a different conception about testifying in behalf of the government if you knew that the people who were accused were only fighting for their --

THE COURT: I tried to explain to you, we are not going to take questions in that form that ask her if she thought something else, would her views be different. We are dealing with what she does know, what she heard and what she is able to tell us, not if she could tell us if things were different.

Q You did testify that you was working at this particular bank five years?

A Yes.

Q You have been a teller for five years?

A Yes.

Q Is it a situation of merit or is it a situation of commuted time on the job that the basics for that raises this ample motion --

THE COURT: That problem came up yesterday. We are not going to pursue the details of the employment

Luciani - cross

Q And you saw someone drop a pistol, is that right?

A Yes.

Q And you saw someone with a shotgun shooting at a police officer, is that right?

A I didn't see he was shooting, but I seen a shotgun.

Q You saw a shotgun, and you identified two people here in court today, is that right, as being two of those four people?

A Yes.

Q But it's your testimony that you cannot connect which person was carrying what weapon or which person was engaged in which activity among the four, is that right?

A Yes.

MR. ROSEN: Thank you.

CROSS EXAMINATION

BY DEFENDANT SIMMONS:

Q Mr. Luciani, you did testify that only one person was carrying a shotgun?

A That's all I seen was one.

Q And you also testified that you saw a cab parked near the bank when you approached the bank?

A Yes.

Q Did you --

THE COURT: When you say you saw only one shotgun, are you saying that you saw one, or that you

1 Luciani - cross

2 saw all four and are able to say there was only one
3 shotgun?

4 THE WITNESS: I only seen one, one shotgun.

5 THE COURT: From your observation, did you see
6 all of them and the total situation enough to tell
7 us that there was only one, or are you just saying that,
8 as far as you know, you only saw one?

9 THE WITNESS: I just noticed one.

10 Q Did you observe all four of the people as they
11 exited the bank?

12 A Observe all four?

13 Q Yes, or you just paid attention to one particular
14 person?

15 A Well, I got better looks at some than I had at others.

16 Q Did the people you indicated exited the bank -- did these
17 people exit the bank before they start firing, or did they fire
18 from the inside of the bank?

19 A Well, it looked like they were shooting just as they
20 were getting out.

21 Q You did testify one time that you saw four men exiting
22 the bank, and then as the police officer exited his car, they
23 started firing on him?

24 A Right out in front.

25 Q So you are saying that the four men exited the bank

Luciani - cross

and then the four men fired on the police after they exited the bank, is that correct?

A This is right out front, right outside the door when I heard the shooting, when I seen the shooting.

Q About how far -- estimate the distance that the four people reached outside of the bank before they started firing?

A Outside the front door?

Q Yes.

A About two feet, three feet.

Q You also indicated that you observed the four people, and in observing these four people, it appeared that they were wearing sneakers?

A Yes.

Q Was the sneakers black and white sneakers, or was it all white sneakers, or was it all black sneakers, that they were wearing?

A I really couldn't say.

Q Did you observe whether sneakers were high-top or low-top sneakers?

A I couldn't tell.

Q Did you observe whether each individual that exited the bank had a weapon in his hand?

A I would say yes.

Q The other three people indicated, did these people have

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Luciani - cross

a revolver or automatic pistol?

A I couldn't say who was holding whatkind of a gun.

Q But it was a handgun?

A Yes.

Q Not the three people --

A I couldn't say. I only seen one shotgun, and I only seen one handgun, so --

Q So you said three people had a gun?

A Yes.

Q And the guns that you observed, these other three people had in their hands, was it a long type gun, or was it the type of gun that you hold in the hand, you know, short type?

A I would say short type.

Q You testified that the police officer only fell once?

A No. I just seen him fall.

Q Did the police officer at any time fall before he crossed the street and got up and crossed the street?

A I don't know.

Q You did give two descriptions to the suspects, did you?

A Yes.

Q You also mentioned that you could remember what each of these suspects who you gave description of did?

A What they did?

Q Yes.

Luciani - cross

A No, I couldn't say who did what.

Q Did you know before you made photo identification that your sister claimed to have seen four suspects getting out of a cab?

A No.

Q When you approached a scene, the bank scene, before the people exited the bank, did you see your sister's car anywhere at the bank?

A No.

Q Did you notice a tan van parked across the street from the bank?

A No.

Q You didn't see that tan van parked across the street with two black males in it?

A No.

Q You said at one time that one of the individual indicated dropped a revolver?

A Yes.

Q Did that individual seem to try to retrieve that revolver?

A No.

Q After he dropped the revolver, did you notice anything else in his hands besides that revolver that he dropped?

A I don't know.

Luciani - cross

Q Did this individual drop the revolver before the police officer fell, or did he drop it after the police officer fell?

A After.

Q After the police officer fell? And you said that the police officer fell across the street?

A Yes.

Q And these individuals -- all four of the individuals chased the officer across the street?

A They didn't go across the street, but they were running in his direction.

Q How close did the individuals get, approximately how close did they get to the officer before they stopped?

A Stopped what?

Q I will put it another way. The individual chased the officer across the street, did they run past the officer, or did they change the course of direction?

A It was like a change of direction.

Q They changed direction. How close did they get before they changed their direction?

A From the officer?

Q Yes.

A About ten feet.

Q So all -- so the officer was across the street, so the individuals was approximately in the middle of the street when

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Luciani - cross

they changed their direction, is that right?

A Yes, they were going towards the cab.

Q Did all four of these individuals chase the officer across the street, or was it three individuals that chased him across the street?

A I couldn't say they were all going in the same direction.

Q Now, the individual that dropped the revolver, what did he do when he chased the officer across the street? Did he swing at the officer?

A Did he swing at him?

Q Yes.

A No.

Q Did he ran behind the officer and shouted at the officer, or he just kept in formation with the rest of the people?

A He was just with the rest.

Q The individual dropped the revolver after the officer fell and when the officer fell, the individuals made or turned in another direction, and this is the time he dropped the revolver, so the individual dropped the revolver in the middle of the street?

A No.

Q Were did the individual drop the revolver?

A On the exit ramp near Fountain Street.

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Luciani - cross

Q On the exit ramp?

A Going onto Fountain Street.

Q He dropped the revolver on Fountain Street?

A Not on Fountain Street, on the sidewalk, the exit ramp there.

Q In other words, the individual dropped the revolver before he reached the street?

A Yes.

Q So this particular individual did not go ten feet from the officer --

A He was with the rest of the individuals.

Q Did the individual go ten feet from the officer and then went back to the exit ramp and dropped the revolver?

A No, he didn't. He dropped it while he was running.

Q He dropped it while he was running?

A Yes.

Q To the officer?

A Towards his direction.

Q I thought you said that he dropped the revolver after the officer fell?

A After the officer fell, they were still running towards that direction.

Q After the officer fell, they ran to the officer's direction?

app. 106

Luciani - cross

A If the officer fell across the street here, and the cab is up here, that's sort of towards -- in his direction.

Q After the individual dropped his revolver, did the other people continue to fire?

A After he dropped his weapon, did the others fire?

Q Yes.

A Yes, I heard a couple more shots.

Q You heard a couple more shots?

A Yes.

Q Did you see anybody else fire after this individual dropped his revolver?

A Did I see?

Q Yes.

A Yes.

Q Did you see all of these individuals fire after this one particular individual dropped his revolver?

A I couldn't say who fired.

Q Did you have a conversation with your sister before you made photo identification?

A No.

Q When was it that you made the photo identification?

A A couple of days after. I'm not sure when it was.

Q Did you make the photo identification on the same day you gave a statement to Agent Quinn?

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Luciani - cross

1
2 A Yes.

3 Q You did not read the newspaper before you gave the
4 identification?

5 A No.

6 Q Did you and your sister make photo identification at
7 the same time?

8 A No.

9 Q Do you think that there is any outside influence that
10 would have any bearing on your ability and your willingness to
11 testify in this particular case?

12 A Any outside influence?

13 Q Yes.

14 A No.

15 Q Do you have any relatives or friends who are members of
16 the local armed forces?

17 A Not good friends.

18 Q Do you have friends, any friends at all, who are
19 members?

20 A I know someone, a friend of my parents.

21 Q A friend of your parents?

22 A Yes.

23 Q He is who?

24 A He is an FBI agent.

25 Q Did you discuss with your parents that you was the

app. 108

Luciani - cross

witness to a shooting incident on May 3rd, 1974?

A Yes, I did.

Q Do you think that the -- the fact that the FBI agent is a close friend of your parents had any influence on your willingness to testify in this particular case in the making of a photo identification?

A Well, he's not the agent that I talked to.

Q I understand that.

A I don't know what you mean.

THE COURT: He wants to know whether the fact that that man is a friend of your parents had an influence on your testimony, your willingness to testify, or your making of a photographic identification.

THE WITNESS: My parents have talked to him.

THE COURT: That's not the question. The question is: Does the fact that there is an FBI agent who is a friend of your parents, did that fact have an influence on your testifying or what you said?

THE WITNESS: No, that's not why I testified.

Q Do you see a direct relationship between the officer who was wounded in the incident and your friend?

A I don't understand what you mean.

Q In other words, do you see a relationship between the officer who was wounded and your friend, as far as a group of

app. 109

Luciani - cross

interest?

A And this friend of my family's?

Q Yes. You see, an employment -- the same type of employment is a group of interests.

A They are almost in the same kind of work.

Q Do you think because of the fact that the FBI agent is a friend of the family, that this might have caused you to be sympathetic to the officer wounded?

A No.

Q You said you passed that individuals -- the individuals indicated -- passed three feet from you at one time during the shooting?

A Yes.

Q Did these individuals fire at you at any time?

A No.

Q Did they threaten you in any way?

A No.

Q After the individuals exited the bank, and immediately after the first shot went off, what did the officer do?

A After the first shot went off?

Q Yes.

A When he got out of his car, that's when he started running and that's when the shooting started.

Q He immediately got out of his car and started --

app. 110

Luciani - cross

1
2 A Yes.

3 Q Did the officer say anything to you?

4 A Not that I know of.

5 Q How close was you standing to the bank area?

6 A To the what?

7 Q To the bank.

8 A To the bank itself?

9 Q Yes.

10 A About eight feet.

11 Q About eight feet. Was there any other people standing
12 closer to the bank than you was?

13 A Closer to the bank?

14 Q Yes.

15 A I seen a couple of people right out front.

16 Q Was these people along on the inside or was they just
17 standing around?

18 A I don't know.

19 Q Did the officer say anything to these people who was
20 standing around?

21 A I don't know.

22 Q You did not hear the officer say anything to the people
23 at any time?

24 A There was all the shouting, and if he said anything,
25 I couldn't pick it out.

app. 111

Luciani - cross

Q Did you give Agent Quinn a statement relative to the officer yelling to the people to get out of the line of fire or get out of the way or take cover, or something like that?

A To Mr. Quinn?

Q Yes.

A I don't remember.

Q I would like for you to read this statement and see if this reflects your testimony to Agent Quinn. You can review the whole statement and see if this is your statement.

A Yes.

Q I want you to read to yourself.

A Yes.

Q Does this particular -- is this particular statement contrary to your testimony to Agent Quinn?

A To Mr. Quinn?

Q Yes.

A You mean is that the one I gave to him?

Q In other words, is it opposite -- is this particular statement opposite in any way what you gave him as to the events that took place that particular day?

A What do you mean opposite?

Q In other words, did you notice any entry on this particular statement that is contrary to the statements that you gave to Agent Quinn?

app. 112

Luciani - cross

1
2 A You mean what I said just now? I don't understand
3 what you mean.

4 Q Did you gave a statement to Agent Quinn relative to
5 the officer who began yelling for people to get out of the
6 way of the gunfire?

7 A If it's on there, I guess I did. I just didn't remember
8 it now.

9 Q Do you think that the fact that there was a whole lot
10 of confusion taking place around the bank, that this prohibited
11 you from making a clear-headed recollection of exactly what
12 took place?

13 A No. I said just what I saw.

14 Q After the police officer yelled for the people to get
15 out of the way, did the people take cover at that time?

16 A I seen some people go down on the ground. Not every-
17 body.

18 Q Did he yell this warning to the people before he
19 started to run, or did he yell just warning while he was running?

20 A Right after he got out of the car.

21 Q Right after he got out of the car, he yelled a warning?

22 A When he started, just as he started running, right
23 after the car.

24 Q Did you take cover when the police officer yelled
25 a warning?

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Luciani - cross

1
2 A No.

3 Q You testified that two police patrol cars went after
4 the cab after the four individuals got into the cab, is that
5 correct?

6 A Yes.

7 Q Was these two patrol cars on the scene before these
8 individuals got into the cab?

9 A Before?

10 Q Yes.

11 A They just got there as the cab started to leave.

12 Q As soon as the cab started to leave, they came on the
13 scene?

14 A They were coming around the corner.

15 Q Do you think that your belief that the people who made
16 the expropriation were criminals motivated you in trying to make
17 a positive identification?

18 A I don't understand what you mean.

19 Q In other words, do you feel as a law-abiding citizen and
20 peace-loving people that the people who allegedly made the
21 expropriation at the bank were criminals, criminals in crime
22 people, and so this in turn you felt that you should make an
23 effort, you know, to make at least one identification of some of
24 the suspects?

25 A Well, yes.

app. 114

Luciani - cross

Q So it's true that you did not know that the people who participated in the expropriation might have been the victims of crimes?

A What do you mean, the victims of crimes?

Q You didn't know that the people who allegedly participated in the expropriation didn't mean you any harm, but they were fighting for their survival as a people and they --

MR. CLARK: Objection, your Honor. I don't know how the witness could possibly know that.

THE COURT: Sustained.

Q Did you know -- did anyone tell you before you made the ID identification that it was said that the people who were captured were revolutionaries?

A No.

Q Did you ever try to re-establish a relationship between the struggle on a national scale and the struggle here in America?

MR. CLARK: Objection.

THE COURT: Sustained.

Q Did you know before you made the photo identification that black people have been systematically oppressed for over four centuries?

A It's not just black people.

Q Correct. So you do agree that there is an oppression

app. 115

Luciani - cross

in this country, not only black people, but white people the same?

A I would say so.

Q Did you know before you gave the statements to Agent Quinn and before you made the photo identification, that resistance is a natural response to oppression?

MR. CLARK: Objection.

THE COURT: Sustained.

Q Did you know before you made the photo identification and gave a statement to Special Agent Quinn, that the people who were captured as suspects who allegedly participated in the expropriation were fighting in a revolution?

A A revolution?

Q Yes.

A No.

Q Did you have any conception, negative or positive, concerning revolutionaries?

A I don't understand what you mean.

Q In other words, had you formed an opinion in your mind concerning the character of a revolutionary?

MR. CLARK: Objection, your Honor. There is no evidence in the record to indicate that defendants are revolutionaries.

THE COURT: Sustained. It's too broad an

app. 116

Luciani - cross

inquiry and doesn't relate to any of the issues in this case.

Q If you were told --

THE COURT: I can tell, if you are going to put that kind of a question, there is no sense completing it.

DEFENDANT SIMMONS: I will change the line of questioning.

THE COURT: You have had an extensive cross examination, and you have covered a lot of ground, a good bit of which counsel would not normally be able to cover, so I think you better plan to draw your examination to a close at this point, unless there is something particular that you have --

DEFENDANT SIMMONS: I have something particular.

Q Of the two individuals you claim to have identified at the scene of the shooting, you did indicate seeing these two people in court today?

A Yes.

Q Did you get a description of the other two people who indicated --

A What do you mean, get a description?

Q Did you check out the size, approximate weight --

THE COURT: You mean can he describe the other two?

DEFENDANT SIMMONS: Yes.

app. 117

Luciani - cross

A Can I describe the other two? Well, I said that one of them was kind of on the heavy side, not fat, but, you know, stocky, and --

Q One was stocky. And the other one?

A I didn't say anything about the other one.

Q Do you feel that by the confusion and what not that was taking place, and the excitement that took place during that event had any effect on your ability to make a positive identification?

A No.

Q Do you think that the reason you did not take cover when the police officer yelled for people to take cover was because it was you who was too afraid to even move?

A It didn't even cross my mind. I just stayed there. I was just frozen.

Q You were just frozen. Is it correct that you was like someone in a state of shock from seeing this all of a sudden situation?

A I wouldn't say I was in a state of shock.

Q You was shocked because of this suddent situation that took place, and this was the reason why you froze?

A Not shocked. Amazed.

Q You were amazed. Do you think that the reason why you did not move was that you was confident in your mind that

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Luciani - cross

the people who were firing at the police officer would not have harmed you in any way, so you didn't see no need to move?

A I didn't even think.

DEFENDANT SIMMONS: No further questions.

THE COURT: Mr. Luciani, in response to one of Mr. Simmons' questions, he asked you -- I may not be recalling it verbatim -- but something to the general effect of whether you want to make an identification because of a view that the people you saw were doing something unlawful or were doing something that was a crime. Do you recall?

THE WITNESS: Yes.

THE COURT: And you answered -- however he phrased the question -- you answered it yes?

THE WITNESS: Yes.

THE COURT: What I want to know is: If you just tell us what you meant by your yes answer, I would want to be sure I understand what you understood you were responding to?

THE WITNESS: Well, the people that -- the alleged robbers, they were in the wrong, so I figured it's my job as a citizen.

THE COURT: To do what?

THE WITNESS: To tell what I saw.

app. 119

Cimmino - cross

CROSS EXAMINATION

BY MR. WILLIAMS:

Q Mr. Cimmino, you told the police at one time that you had seen someone that you believed was involved in the incident standing near the door of the bank, didn't you?

A Well, when I was questioned last time here I said something to the effect, but because of the time elapsed, sort of almost nil now.

Q But can you tell us whether or not you remember someone standing near the door wearing a ski mask?

A I must have said that, yes.

Q Before coming to court to testify, and, in fact, sometime last May, some police officers asked you to look at pictures, did they not?

A Right.

Q At the time you looked at the pictures, you picked out two pictures, is that right?

A Yes.

Q As a matter of fact, they were pictures of Mr. Haskins and Mr. Alston here, isn't that true?

A Right.

Q You told the police at that time that you weren't sure that they were the ones, isn't that true?

A Well, I didn't think I worded exactly the way you are

Cimmino - cross

phrasing it.

Q What did you tell the police?

A One I was sure of, the other not so sure.

CROSS EXAMINATION

BY MR. ROSEN:

Q Is the reason that you don't know what weapon the individual who was farther away from you was carrying -- is the reason for that the distance that person was away from you?

A That's correct. A pistol or shotgun. The distance, yes.

Q It was too far away for you to distinguish clearly which it was, is that true?

A You mean features facially?

Q I meant the weapon.

A I would say the distance, yes.

MR. ROSEN: Thank you.

CROSS EXAMINATION

BY DEFENDANT SIMMONS:

Q Would you tell the officer of the New Haven Police Department that you didn't really get a good look at the three individuals indicated in the bank?

A Well, like I say, the third person we can rule out because I never did see a third face.

Q Do you recall a detective asking you on May the 5th,

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Cimmino - cross

or any time before that particular date, if you would be able to identify any of the three black males that was in the bank?

A By looking at the photographs, you mean?

Q Excuse me?

A By looking at the photographs, if I could identify them?

Q Yes.

A I told them the photographs I would be able to pick someone out, yes.

Q Did you recall saying that you really didn't get a good look at their faces?

A That, I don't recall. I don't recall the exact words I stated back in May. The dialogue is not familiar at this time.

Q You did get a good look at the people's faces?

A Let me put it this way: When the photographs were shown to me, I was able to pick them out because the picture comes back to you. I was able to recollect the faces when I noticed those photographs.

Q Did you get a good look at the people's faces indicated?

A Enough to recall when the pictures were shown to me.

Q You also testified that the first time you noticed that it was unusual situation taking place is when you looked up and saw an individual standing at the left corner of your desk, and you also gave a description of that individual, is that correct?

app. 122

Cimmino - cross

A Yes.

Q Did you also testify that you was engrossed in your work, then, at which time you heard a forceful type of voice that was shouting to the girl that was seated at the desk to your right, and this voice went something to the effect, "Go into the lobby and lie down and no one will get hurt"?

A Yes, that's right. That transpired, yes.

Q So which of these things came to your attention first? Was it noticing of a voice speaking to the girl, or the notice of an individual standing on the left-hand, the left corner of your desk?

A It almost happened simultaneous. The one on my left and the one on my right.

Q Both of them spoke at the same time?

A More or less, yes.

Q Was you concentrating, during the time you looked up, did you look, did you concentrate on the individual's face, or did you concentrate on the gun that he was holding?

A I just glanced, I saw the whole picture, face and gun, both.

Q Was you frightened at that time or in any way -- did you feel threatened in any way during the time this took place?

A Was I threatened?

Q No. Did you feel threatened?

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Cimmino - cross

A I should think I was.

Q Did you think that this was an extremely shocking situation at that particular time?

A At that moment, yes. You're looking down the barrel of a gun, you would be.

Q You said simultaneous these two -- there was two people that said something to you and to the girl simultaneous?

A Right.

Q And you heard to the effect everything that the person said to you and everything that was said to the girl?

A Yes. There was a shouting of orders to get in the lobby and lie down, almost at the same time, yes.

Q During the time, did you testify seeing three people in the bank, or two people?

A Well, if there was a third person, like I say, it would be very hazy at this time, and time elapsed has sort of rubbed it out.

Q But, to your knowledge, you believe there was three people in the bank?

A I don't know whether the word "believe", but like I say, everything happened so fast that it was hazy, and I couldn't say.

Q Did you see any indication or hear any indication that there was a fourth person in the bank?

Cimmino - cross

A No, I don't think so.

Q During the time that you was confronted by one individual and the girl was confronted by one individual simultaneous, was there any customers in the bank at that time?

A Oh, yes, there was a few.

Q Now, during this particular time, what did the customers do?

A Well, they complied with the orders to lie down on the floor.

Q But they directed the orders to you and the girl and didn't direct the orders to the customers, the customers just complied with the orders because they didn't direct the orders to you?

A I wasn't noticing the customers at that time, what their movements were.

Q Approximately how far is it in distance is it from the officer area and tellers' counter?

A Well, 20, 25 feet, probably. From where I was at, you mean?

Q 20 or 25 feet.

A Something like that, roughly.

Q Is it true that the office area situated in the bank would be facing the tellers' counter?

A More or less, yes.

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Cimmino - cross

Q So the people indicated would have had their back turned to the tellers' counter in order to face you and the girl?

A Momentarily when they first came up, yes.

Q So during the time that momentarily when they first came up when they directed the orders to you and directed the orders to the girl, at this particular time they had their back turned to teller's counter, to the tellers' counter and the customers?

A They might have been in that position. I didn't notice exactly what position they were standing at that time.

Q You did not see exactly what position the individual was standing in?

A Like I say, the person next to me might have been standing with his back or sideways -- I mean, I didn't really position the way he was standing.

Q But you did testify that the individual who gave orders to you was speaking directly to you and the other individual was speaking directly to the girl?

A Yes. We were, like I say, almost simultaneously ordered to do these things, and we did.

Q After you were told to lie down on the floor and don't get hurt -- and you won't get hurt, you did see another individual standing at the door, you glanced up for a few minutes like you looked up for a few minutes in order to see another individual at

Cimmino - cross

the door?

A Well, like I said, if there had been a third person, it would be very vague at this time, because events were so fast and the time elapsed now.

Q Did you give the FBI agent a statement relative to seeing a third man standing at the door, the front door, wearing a dark blue or black ski mask?

A Like I say, I'm not sure.

Q So you are not sure that you actually saw this man standing there with a ski mask on?

A Right, during the confusion, yes.

Q So do you think that the fact that you are not sure that you saw a man standing at the front door with a ski mask on could have had an effect on your ability to make a positive identification of the other two people?

A No, the other two I can identify from the photographs. When they were shown to me, I was able to pick them out of a group.

THE COURT: Do you anticipate very many more questions?

THE COURT: I will excuse the jury until ten after 2:00. Jury may retire first.

(Jury excused.)

1 R A L P H C I M M I N O, resumed.

2
3 THE COURT: Ladies and gentlemen, we will resume
4 now and go right through until just about 4 o'clock,
5 and then suspend for the day.

6 Mr. Simmons, you have additional questions.

7 CROSS EXAMINATION CONTINUED

8 BY DEFENDANT SIMMONS:

9 Q Do you think that because you is an employee of a bank
10 in question encourage you in any way in making at least one
11 identification of a suspect?

12 A That has no bearing on that.

13 Q Did you give your statement to the FBI concerning the
14 events that took place solely on reporting the events that took
15 place that day?

16 A Yes, so far as I could recollect, right.

17 Q It didn't matter to you who was involved in the
18 situation, you just wanted to convene your recollection of what
19 took place?

20 A Right.

21 Q Would it matter where you would convene that information
22 -- who you could convene that information to concerning what
23 took place that day?

24 A As long as I reported what I thought I saw, no.

25 Q Did you have -- that you have an interest in seeing
people suspected prosecuted and you felt this encouraged you

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Cimmino - cross

more and this encouraged you more to make a positive identification?

A No. I'm just going along with the law. If you recognize anybody in the events, and I just went along with it.

Q Did you discuss the particular events of that day with any people besides the police officers indicated?

A No, I didn't.

Q Did you take a special interest in giving information to police officers concerning the events that took place that day?

A I tried to cooperate, and as far as my recollection, give them what I remember, you know, as far as the events that occurred.

Q Do you recall an investigator of the defense asking you to give statements relative to the events that took place that day?

A Yes, I was questioned. You mean right in the court, yes.

Q Excuse me?

A I was questioned here.

THE COURT: He is asking you about whether anybody sought to ask you questions outside of the court, any person who did so on behalf of the defendants, do you recall that happening?

THE WITNESS: I had a phone call from some person, I forget his name, Riker --

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Cimmino - cross

THE COURT: Rinker?

THE WITNESS: It might have been. That's it.

Q And did this individual indicate to you that he was working for the defense, he was investigating for, making an investigation for the defense?

A I recall him mention the fact that he was an investigator, right.

Q Did you refuse to answer questions concerning the events of that particular day?

A That's right, because over the phone, I didn't know who I was speaking to.

Q Did you feel that by speaking over the phone convening the events that took place that day would have jeopardized you in any particular way?

A It wasn't jeopardy, it was a case of I didn't know who was on the phone. It might have been somebody saying he was such and such a person, and I had no idea who it was, so I wasn't going to make any statements over the phone.

Q Did you tell this person the reason why you didn't want to ask the questions, or you just said that you didn't want to answer questions?

A That's right. I just cut him off. I wasn't going to answer, that's it.

Q Did you discuss the events of that day with any other

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Cimmino - cross

employees of that particular bank?

A No. I figured it was what I had in mind myself, and there was no need for discussing it with anyone, no.

Q You did say that at one particular time, some events that you reported on was sort of hazy to you, didn't you?

A Well, the fact this happened back in May, a lot of things are a little bit hazy, yes.

Q Did you give a statement during the month of that event that some things was hazy that took place that day?

A I don't recall the dialogue I used.

Q You did say something to that effect?

A Again, I say, I can't quote words that I don't remember.

Q Did you just testify today that you wasn't sure about seeing a person at the door with a ski mask on because things had gotten sort of hazy?

A That's right. During the excitement and period elapsed, yes.

Q Do you think that any time for you to better inform -- I will pose another question.

You did mention at one time one of the suspects had a shotgun?

A Right.

Q And this person was standing directly in front of you?

A To the left of me.

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Cimmino - cross

Q And you was completely under control of your confidence and you didn't get hazy at this particular time?

A No, because that person was close enough where I could make out who he was and the weapon he had.

Q Then after you lie down on the floor is the time when you got hazy, is that correct?

A Well, I don't know if the haziness set up then, or when it did. I don't recall that.

Q You did say while you was lying on the floor you look up and got a good look at the person carrying the shotgun?

A Yes, because he was crisscrossing across the lobby.

Q At the same time that you looked up and saw the person carrying the shotgun, you saw a third person standing at the front doorway wearing a dark blue or black ski mask?

A That's the person -- like I say, I don't remember as far as describing at this time.

Q So it's possible that there wasn't anybody at the door and you just -- you just was in the confusion, you thought that you might have seen somebody at the door?

A That's right. Because everything happened so fast and people moving around. It was hazy, yes.

Q Did the person at the door direct any orders to you?

A No, not to me, no.

Q Did the person at the door direct any orders to the

Cimmino - cross

people in the bank?

A Well, I heard voices, but I don't know who was speaking to who at that time, no.

Q But did you see the person at the door specifically speak to anybody?

A No, I didn't. I just heard voices and I didn't know where they were coming from.

Q I have a statement here from Special Agent Townsend, John H. Townsend, and I don't know if this is your statement you gave to him.

A Which paragraph is this?

Q This particular paragraph right here. Would you read out loud this particular paragraph?

A "This third man at the front door said to a customer who was coming in at that time, 'Come in, come on in, lay down.'"

Q So the person at the front door did say something, is that correct?

A Let me say this: I don't remember if it was a person at the front door that said this.

Q You just assumed that since this was said, that the person at the front door said it?

A It came from that general direction, from the front door. This order to come in and lay down. That's all I remember.

Q Did you assume, because this particular thing was said,

Cimmino - cross

that the person at the front door said it?

A Again, I say, it's too far back to pinpoint a third person or whatever.

Q Would you please state to the Court the reason why you told Special Agent Townsend why the person at the front door said to the individual coming in the door, "Come on in, come on in and lay down"?

A I must have stated it because I heard someone give that command.

Q You didn't see fit to tell the special agent that you didn't see and heard that third man you spoke about said that?

A No, I couldn't be specific on that person, no.

Q Don't you think that it would be to the benefit for proper investigation for you to tell exactly what you saw and exactly what you heard?

A Well, that's like I said -- that's what approximately I heard at that time.

Q Approximately?

A Originated in the front door area.

Q In the front door area. Did you see any other people standing, or glimpse any other person standing in the front door area besides the person you saw?

A No, I didn't. If they were, they were customers or people just milling around.

Cimmino - cross

Q And so the person that you saw with a ski mask the --
was the only person standing in the front door?

A During the confusion, I can't remember who was
standing where near the front door.

Q So you sort of glimpsed toward the front door,
and then you thought that you might have seen somebody to the
front door, so you couldn't approximately have gotten a
description of that person?

A No, it was too fast.

Q Did you give a description of that person to the FBI
agent?

A I might have if it's so written.

Q Will you please explain to the Court what you mean
by you might have, in other words, do you feel that you might
have gave him a description of the person that you thought was
at the door just because you felt you should have gave him the
description?

A No, it's not that.

Q But you can't recollect seeing anybody positively
at that front door?

A No, I can't say positively.

Q Could you approximate the time that it would take for
you to get a good description of an individual?

A You saw at a glance, and you get a picture as you glance;

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Cimmino - cross

I have no idea how long.

Q I'm talking about a description, whether you could tell the size of the person, the weight or hairstyle, whether he had a mustache or not, whether he had a specific gun; approximately how long would it take you to make a description of a person with these different make-up, it may be about ten seconds?

A I can take that in at a glance, but I don't know timewise what it would take. I have no idea.

Q The maximum time would be about a minute, you would be looking at the person for about a minute in order to get a good description of him, right?

Q Like I say, I don't know timewise.

Q I also like to call something else to your attention in this statement. Will you also read aloud this particular paragraph here?

Q "Mr. Cimmino described this man as follows: Male Negro, five foot-ten; five-seven,, medium build, age -- not wearing -- some sort of dark clothing."

Q Do you see anything, or do you see two specific points that I brought out to you in this statement contrary to your -- to the statement that you gave to the FBI agent?

THE COURT: Mr. Simmons, he can't guess what you have in mind. If there is some point you want to ask him about, ask him about it.

Cimmino - cross

1
2 Q I'm talking about the point concerning seeing and
3 hearing the third person at the door, and the point about
4 description that the agent said that he gave of the third person
5 to the door, do you think this is contrary -- is this contrary
6 to your statements?

7 A If I said anything similar to that at this time,
8 I don't recall, and like I said, it was amid confusion, things
9 happened very rapidly.

10 Q During the time that you was questioned by the agent,
11 did the agent tell you that he wanted you to be truthful about
12 everything that you said because you might have to say these
13 things under oath?

14 A Yes. I tried to recall at the moment what I had seen.

15 Q So since the agent reminded you that you might be a
16 witness in this particular case, you did try to recollect
17 exactly what you saw and you did try to prepare yourself for
18 this particular testimony?

19 A Yes. I tried to recall the events as close as I
20 could remember them.

21 THE COURT: Anything else, Mr. Simmons?

22 DEFENDANT SIMMONS: Yes.

23 Q You said that you was assistant manager of the bank?

24 A No, I didn't say that.

25 Q Are you assistant manager of the bank?

Cimmino - cross

1
2 A No, it's a different role from that.

3 Q Is you hold your position equivalent to the assistant
4 manager?

5 A It's a different department altogether, the safe
6 deposit.

7 Q You work in the safe deposit. You are a vault attendant
8 in the bank?

9 A Yes.

10 Q How long have you been a vault attendant?

11 A I have been there four years.

12 Q You was a vault attendant four years?

13 A Right.

14 Q How long was you working for Westville Savings Bank?

15 A Four years.

16 Q Are you the only vault attendant?

17 A There is other people involved.

18 Q Do you feel that if you contribute to this investigation
19 that it would help you in a promotion and this encourage you to
20 make identification?

21 A It has no bearing on that.

22 Q Did you give your statements concerning the events that
23 took place that day to police of your own free will?

24 A Yes. They asked me and I tried to answer the best,
25 the knowledge I could remember what had happened, yes.

Cimmino - cross

Q Did you have any feelings toward the people who was suspected of making the appropriation that you think contributed to your ability to make a positive identification?

A No, I didn't have no personal feelings.

Q When was it that you first viewed the photos for identification?

A The following day.

Q Was it early in the morning?

A It was about noontime, approximately.

Q Did you have occasion to view the newspaper before?

A No, I hadn't seen any newspapers.

Q Do you normally get the newspaper?

A Yes, but I don't read it until I get around to it.

Q Did you think because of the events that took place on May 3rd, there might have been something in the newspaper of a special interest?

A No, because I knew what had happened in my own mind and that was it.

Q Did you know what took place on the outside of the bank after the people who allegedly expropriated the money left?

A I heard that on the radio.

Q You heard it on the radio?

A Right.

Q And on the radio, they did mention that the people who

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Cirmino - cross

were involved were allegedly connected to the Black Liberation Army?

A They might have said that. I don't remember word for word what was spoken. I just got a line of what had happened and that's it.

Q Do you feel -- did anything that was said on that radio that you heard on the radio broadcast encourage you in any way to give a statement to the FBI?

A No. That had no tie-in with that at all.

Q Did you know before you made the photo ID before you gave statements to the FBI agent that the captured suspects were freedom fighters?

A No, I had nothing -- I had no knowledge what they were or what group.

Q At the time you made the photo identification, you were under the impression that these people were criminals?

A I'm not saying that. I didn't say anything about their background. I just made identification of people that were in that one incident, irregardless of the group or background or anything of that stuff?

THE COURT: Anything else?

Q Do you agree that white people are also oppressed as well as black people?

A You mean minority white people?

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Cimmino - cross

Q Yes. That we have poor white people as well as we have oppressed black people?

MR. CLARK: Objection, your Honor.

THE COURT: He can answer that question.

A Well, there is poverty in all kinds of races.

Q Did you know before you gave a statement to the police that poverty and oppression of these people, black, white, people of color is directly related to the systematic oppression that the government -- of the government?

THE COURT: Is that the question?

DEFENDANT SIMMONS: Yes.

THE COURT: Now you are beyond the fair bounds of cross examination. I allowed the preliminary question, but that's sufficient on that score.

Anything else of this witness?

DEFENDANT SIMMONS: I have one more question.

Q Did you know before you made the photo ID and gave a statement to the police that the people captured didn't mean you any harm, they didn't have anything personal against you, they were only trying to strike a blow against capitalism and they were fighting for their self-determination?

A I had no idea what their cause was or none of that.

DEFENDANT SIMMONS: No further questions.

THE COURT: Any redirect?

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BAKER - cross

Q Was there any outside influence to encourage you to testify in this particular case?

A No, sir, a lot of people in the City don't know that I'm a police officer, and when I'm off, I mostly keep to myself and I don't have any influence. I make my own judgment and I have other supervisors to help me out if I have difficulty in making decision, sir.

Q Do you know there is a revolution going on in this country?

MR. CLARK: Objection, your Honor.

THE COURT: Sustained.

If the spectators cannot retain their reaction, they will be free to react outside this courtroom and not inside it.

Anything else, Mr. Simmons?

Q Is it true that other people in the department coached you into giving statements as far as description and events that took place?

A Only when I was in training division.

Q I'm talking about this particular case.

A No, I just used my basic experience, sir.

Q Do you feel that because of the fact that you are a

1 Baker - cross

2 police officer that you were justified in killing another man?

3 MR. CLARK: Objection.

4 THE COURT: Sustained.

5 Q Do you feel that you are at a state of war with the
6 black and poor people in general?

7 MR. CLARK: Objection.

8 THE COURT: Sustained. I think you have now
9 reached well beyond the point where your questions
10 are relevant, Mr. Simmons, that's probably enough.
11 We have gone 50 minutes on this examination.

12 Any redirect?

13 MR. CLARK: Yes.

14 THE COURT: Before we do that --

15 DEFENDANT SIMMONS: I don't appreciate the way
16 you're cutting into this particular questioning. It
17 takes me some time to establish a base, and I'm --

18 THE COURT: I'm trying to excuse the jury, and I
19 would appreciate your --

20 DEFENDANT SIMMONS: The way you have handled it
21 so far with the funky shit that you pull. with
22 that jury -- you might as well --

23 THE COURT: You're about to jeopardize your --

24 DEFENDANT SIMMONS: I'm not about to go on with
25 this case the way you're handling -- standing mute.

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1 Baker - cross

2 THE COURT: It may be you may be right, you won't
3 go on. Would you please sit down so I can excuse
4 the jury right now, or I will have the marshal escort
5 you to your seat? Sit down, Mr. Simmons. Will you
6 sit down right now, please, or the marshal will escort --

7 DEFENDANT SIMMONS: You even have a clandestine
8 meeting with the jury on the panel --

9 THE COURT: Please sit down and be quiet, right now.

10 DEFENDANT SIMMONS: You are running the whole --

11 DEFENDANT ALSTON: Judge Newman, go ahead with the
12 lynching. See, we have got to do it now -- we are at
13 a point now where we --

14 THE COURT: Mr. Simmons, please sit down, please
15 take your seat.

16 DEFENDANT SIMMONS: All this shit --

17 THE COURT: The jury will take their midafternoon
18 recess.

19 DEFENDANT SIMMONS: I'm not going on with this
20 secret bullshit.

21 (Jury excused at 3:40 p.m.)

22 THE COURT: Mr. Simmons, let me make it clear to
23 you in the absence of the jury --

24 DEFENDANT SIMMONS: You're upsetting me. I don't
25 want to hear anything -- whatyou have to say.

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1 Baker - cross

2 THE COURT: When I tell you your examination is over,
3 and if you cannot avoid language that you know perfectly well is
4 not suitable for the courtroom, then your right to defend
5 yourself is -- will be at an end, and Mr. Clifford will resume.

6 DEFENDANT ALSTON: This whole system ain't suitable to
7 us.

8 THE COURT: Mr. Simmons, let you to understand this,
9 I think you do, it has come up several times, but the kind of
10 outburst that just went on is not going to be repeated; if you
11 don't feel you can contain yourself, Mr. Clifford will resume.

12 During this recess, I suggest you and Mr. Clifford
13 discuss what your future conduct is going to be, and we will
14 decide then whether you are going to resume.

15 DEFENDANT SIMMONS: Before you take that action, I
16 want you to understand that I'm going to expose all that secret
17 funky business that you had going on in this courtroom right in
18 front of the jury; you might as well call a mistrial right now.

19 THE COURT: We will discuss it after the recess.

20 (Recess taken.)

21 (In the absence of the jury.)

22 MR. WILLIAMS: Once again, I would like to renew my
23 motion to sever the defendants in this case, in view of the events
24 which transpired prior to the recess. I think that's clear that
25 it's not possible for my client to obtain a fair trial under these

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1 Baker - cross

2 circumstances of tension between the bench and one of the
3 defendants, which seems to have come into being, and the
4 various comments which were passed between the bench and one
5 of the defendants in the presence of the jury, I think adversely
6 affect my client's opportunity to have a fair trial.

7 THE COURT: Your motion for mistrial on that ground
8 is denied.

9 MR. WILLIAMS: It's a motion to sever.

10 THE COURT: It's denied.

11 MR. ROSEN: On behalf of Mr. Alston, I make the same
12 motion, whether for severance and mistrial.

13 THE COURT: Your motion is denied.

14 Mr. Simmons, let me understand what the future course
15 of your representation is going to be in this trial. Do you
16 want to come up here a moment at the lectern, Mr. Simmons?
17 Would you come up here to the lectern?

18 Now, there are two things I want to understand from
19 you before we bring the jury back in. As I mentioned to you
20 when you wanted to proceed to represent yourself, you could do
21 that only so long as you abided by the normal rules of somebody who
22 acts in a representative capacity in the courtroom. I have some
23 doubt at the moment, as I see you deliberately reading your notes
24 while I'm speaking to you, whether you are able to do that, but
25 I'm more concerned about two very specific matters: One, whether

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Northrop - cross

18 CROSS EXAMINATION

19 BY DEFENDANT SIMMONS:

20 Q After you arrived at the George Street area, what was
21 the first thing that came to your attention?

22 A When I first arrived on George Street, I noticed a vast
23 number of blue and white units, plainclothes and uniformed
24 personnel.

25 Q You was instructed to go to a certain area?

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Northrop - cross

1
2 A Yes, sir. I received a radio broadcast or a monitored
3 radio broadcast requesting all special weapons personnel to
4 assemble at the armorer's van, which was located at Chapel
5 and Sherman.

6 Q Now, the SWAT organization, isn't it true that the SWAT
7 organization is also located in other police units throughout
8 the country?

9 MR. CLARK: Objection, your Honor.

10 DEFENDANT SIMMONS: I think it's necessary to
11 bring out that --

12 THE COURT: He can answer as to whether his --
13 the tactical team of which he said he is a member is
14 located in other departments. Is it, your organization?

15 THE WITNESS: Yes, sir. There is, to my knowledge,
16 other organizations, perhaps not the same name, but
17 organizations of this similar nature throughout other
18 cities.

19 THE COURT: He is asking about your organization.
20 You are a member of a team within the New Haven Police
21 Department, right?

22 THE WITNESS: Yes, sir.

23 THE COURT: Does that team function in other cities?

24 THE WITNESS: Not to my knowledge, sir.

25 Q Isn't it true that in other cities there is also a

Northrop - cross

SWAT team on the police force?

THE COURT: Are you asking him are there other police departments whose members do similar duties, is that what you're asking?

DEFENDANT SIMMONS: No. I'm asking him, isn't it true that the organization SWAT is also located in other police departments throughout the country?

THE COURT: It's not clear what you mean by the organization. He has testified about a team in the New Haven Police Department, and he says his team doesn't function in other cities. If you are asking him do other police departments have other teams with the same letter designation that do the same duties, if that's your question, we are not interested in it, because we are not concerned with what police departments do in other cities.

Q This organization SWAT is special weapons and tactics team, is that it?

A Yes, sir.

Q Special weapons and tactics team. Now, isn't it true that in other police departments throughout the country, there also is a SWAT team?

THE COURT: Mr. Simmons, we are not going to go into the organization of other police departments.

1 Northrop - cross

2 DEFENDANT SIMMONS: The thing I'm trying to
3 explain is that the SWAT team is not a local
4 organization restricted to the New Haven area. The
5 SWAT team is a national organization and -- in other
6 words, is a national effort of oppression against
7 people. This thing I'm trying to bring out.

8 THE COURT: He told us that his team, the unit
9 of the New Haven Police Department --

10 DEFENDANT SIMMONS: I'm not talking about his
11 squad. The army -- you have squads and platoons, but
12 it's still the same army. I understand that --

13 THE COURT: You're not going to go into the
14 organization of other police departments. Let's move
15 on to something else, please.

16 Q You also testified that there are special qualifica-
17 tions for members of the SWAT team, is that correct?

18 A That's correct, sir.

19 Q Does the qualification have anything to do with the
20 individuals personality?

21 A I testified to the personality make-up was psychological
22 make-up of the individual is a criterion.

23 Q Psychological make-up. How many members of the SWAT
24 team of the New Haven Police are black?

25 MR. CLARK: I will object to that.

Northrop - cross

THE COURT: Sustained.

MR. CLARK: It's so far afield.

Q Are there any members of the SWAT team, New Haven Police Department, who are black?

A Yes, sir, there are.

Q The members that are black on SWAT team of New Haven Police Department, do these members make up over 25 percent of that team relative to race?

THE COURT. The exact numbers don't matter.

There was an objection made to how many, and I sustained that. You are entitled to bring out whether there is an absence of blacks, although even that is of marginal materiality.

Q Are there more than three members --

THE COURT: The numerical make-up is just not something that's going to be pursued.

DEFENDANT SIMMONS: The thing that I want to bring out here, that we are aware of certain pacification the government uses to get over, so in order to keep the people from bringing out a protest of equal opportunity, they will insert one member of a minority race.

THE COURT: I don't need a speech.

DEFENDANT SIMMONS: In this group, and so --

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Northrop - cross

THE COURT: I understand the reason you asked the question.

DEFENDANT SIMMONS: I want to bring out there probably is not over one or two members of that SWAT team that are black.

THE COURT: The numbers are not relevant to this case. Please move on to something else, Mr. Simmons.

Q On that particular day, May 3rd, 1974, did your team conduct any particular maneuvers?

A Are you referring, sir, to my team?

Q Yes.

A Yes, sir, they did.

Q What maneuvers did your team conduct in this search?

A We conducted a search of the dwelling or the building at 136 Sherman Avenue.

Q In the process of the search, did you use any specific tactics?

A Yes, we did.

Q What tactics did you use in order to carry the search out?

A We utilized a systematic operation commencing with Room 301 on the third floor, continuing through the third floor level until we arrived at Room 305.

Q In this search operation, you did testify that you were

Northrop - cross

afforded special equipment, is that correct?

A Yes, sir.

Q Is it a case where you are given certain equipment on all occasions, or are you given equipments relative to the nature of the situation?

A The equipment that we would utilize would be dependent upon the situation or the operation that we would encounter.

Q Then, there would be a person in charge who would direct what kind of equipment you would use in the type of operation?

A Yes, sir, there would be a supervisor there.

Q In this particular organization, whatkind of equipment did you use as -- that's not normally used in police duty?

THE COURT: That's the same thing Mr. Williams asked, and there was objection to it, so it's not going to become any better a question because you ask it, Mr. Simmons.

Q Isn't it true that SWAT team use semiautomatic weapons?

THE COURT: That's another way of asking the same question. The nature of their weapons is not relevant to this case, Mr. Simmons. You will have to move on.

Q On this particular date, the incident, May 3rd, 1974, you had in your possession a shotgun, is that correct?

A That's correct, sir.

Northrop - cross

Q And you also had on your person bullet-proof vest, is that correct?

THE COURT: I have just explained to you twice that the nature of his armaments are not relevant to this case, so please move on to a different topic.

Q To your knowledge as a police officer, how long was it that SWAT team existed in the police force?

MR. CLARK: Objection.

THE COURT: Sustained.

Q Isn't it true that SWAT team came about because the people started resisting oppression?

MR. CLARK: Objection.

THE COURT: Sustained. Let's move on. This line of questioning is not relevant to this case. Let's move on to another topic.

DEFENDANT SIMMONS: It's very difficult examining this witness because of the restrictions that you have put on my questioning.

THE COURT: If you prefer Mr. Clifford to conduct the exam, he is available.

DEFENDANT SIMMONS: I hope you understood what I just said a few minutes ago. I said because of the restriction that you leveled on my questioning. I didn't say that I was incapable of asking the question.

Northrop - cross

1
2 THE COURT: If you find it difficult to question,
3 you can call upon Mr. Clifford. If you prefer to do it
4 yourself, then you can do it yourself, but whether you
5 question or Mr. Clifford, the questions are going to
6 relate to this case. Now, if you have a question that
7 relates to the case, you can ask it. If you don't,
8 that's all right.

9 DEFENDANT SIMMONS: As far as the case is concerned --

10 THE COURT: Let's not argue about it.

11 DEFENDANT SIMMONS: I was under the assumption
12 that the case was -- deal with anything that took place
13 with myself and the other two comrades on May 3rd,
14 1974.

15 THE COURT: You just ask the question.

16 DEFENDANT SIMMONS: If I ask anything that took
17 place that day having relationship to us, I feel it's
18 part of the case.

19 THE COURT: You put the question, and if it's
20 a proper question, I will allow it. If I don't think
21 it is, I won't. Ask your next question if you have
22 one.

23 DEFENDANT SIMMONS: I would like for you to
24 explain what basics do you make your decisions on what
25 is a proper question and what is not a proper question?

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Northrop - cross

I don't think that you're basing it on a constitutional ruling or statute.

THE COURT: We are not going to take the jury's time now to go into the nature of the rules of evidence. I'm sorry. As a general rule, your questions are going to have to relate to what occurred. If it's not clear to you what you can ask and what you can't, then perhaps Mr. Clifford ought to take over, but we are not going to take the jury's time to go into a big argument about what's relevant. Please put your next question if you have one. If you don't have a question, then that's the end of your examination. Do you have a question, Mr. Simmons?

DEFENDANT SIMMONS: The time that you spent butting in and running off at the mouth, I could have went on and examined the witness. You keep --

THE COURT: You're coming back to where we were yesterday.

DEFENDANT SIMMONS: You keep running off at the mouth everytime I question somebody.

THE COURT: Are you finished?

DEFENDANT SIMMONS: No further questions.

THE COURT: Is there anything else of this witness?

MR. CLARK: Nothing further.

THE COURT: You are excused, Officer, thank you.

(Witness excused.)

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1 Silva - cross

2 cross examine the witness or not, make up your mind.

3 THE COURT: Put the question and we will see if
4 it's proper. If there is going to be an extended
5 argument by you, afterwards, we will make other
6 arrangements. Just ask the question right now, Mr.
7 Simmons.

8 DEFENDANT SIMMONS: I think you wasted about
9 fifteen minutes of the jury time.

10 THE COURT: If you can't put the question, you
11 can sit down, which is it going to be?

12 BY DEFENDANT SIMMONS:

13 Q Did the fact that your uncle told you that the
14 incident happened on May 3rd, 1974 was Communist activity encourage
15 you to testify today in behalf of the government?

16 A Was allowed me to come here was the court subpoena that
17 I was served with when I was in school. I was hesitant to come,
18 but since the government, you know, approved that I should come
19 here, then I came here. At first, I was unwilling to come, but
20 since the government, you know, sort of court warrant, then I
21 decided to come here.

22 THE COURT: You came because there was a subpoena?

23 THE WITNESS: A subpoena, right.

24 Q So at first you wasn't really willing to come?

25 A Sure, I was not willing to come, but since the government

1
2 Silva - cross

3 said I should come, with a court subpoena, I got to come.

4 Q So you felt the fact that the government subpoenaed
5 you, if you didn't come, there would be repercussion?

6 A Exactly, sure.

7 Q Isn't it true at the present time that the most
8 important thing to you is that you continue your education?

9 A Sure.

10 Q That you are pursuing now at Wake Forest?

11 A The basis of my being in the U.S., for my education
12 and nothing else. I don't want to get involved in any activity
13 besides the education, which I came for.

14 Q So you -- isn't it true that you would do almost
15 anything in your power to continue your education at Wake Forest
16 College?

17 MR. DOW: Objection.

18 THE COURT: Sustained. If you want to ask him
19 would it affect his testimony, you can do that, but
20 what other personal arrangements he would make to
21 continue his education we are not interested in.
22 If you want to ask him: does it affect his testimony,
23 what he says here in court, you can ask him that.

24 Q Isn't it true that the reason why you agreed to answer
25 the subpoenas was because you did not want any interruptions or
you didn't want to get involved with any trouble that might have

1 Silva - cross

2 black people in this country?

3 A I don't think so. No.

4 Q Did you know throughout the history of black people
5 in this country, other black people were used to aid and abet
6 the oppression of their own people?

7 MR. DOW: Objection.

8 THE COURT: Sustained.

9 Q Did you ever in the life of your education heard
10 anything relative to a black man in the history of black people
11 by the name of Nat Turner?

12 MR. DOW: Objection.

13 THE COURT: Sustained.

14 Q Did you know before you decided to testify in behalf
15 of the government that the primary force to stop the insurrection
16 of Nat Turner were house slaves, better known as other black
17 people, who were willing to cooperate with the government?

18 MR. DOW: Objection.

19 THE COURT: Sustained. Mr. Simmons, you are going
20 to have to move on to another topic.

21 Q Did you know before you agreed to testify on behalf
22 of the government that myself and two comrades here is an example
23 of the oppression leveled on black people in this country?

24 MR. DOW: Objection.

25 Q And we are the victims of crime?

1 Silva - cross

2 some affect on your ability to go to school and pursue your
3 education?

4 MR. DOW: Objection.

5 THE COURT: He can answer that.

6 Q Isn't that true, that the reason why you decided to
7 answer the subpoena of the government, or decided to help the
8 government out in its investigation, because --

9 THE COURT: That's two questions, again. You're
10 asking him why he decided to obey the subpoena. Now,
11 if you want to ask him that question, you ought to let
12 him answer that.

13 Q Isn't it true that you decided to answer the
14 government's call for your testimony because you did not want any
15 interruption into your continuance of schooling, and you didn't
16 want no trouble with the government, isn't that correct?

17 A It's both place -- first, I answered the subpoena
18 because I was an eyewitness, in the first instance, I was an
19 eyewitness of the whole episode; secondly, to, I don't want to
20 get myself involved if I deny that I wasn't there, that might
21 mean something else, so I was an eyewitness, and at the same time
22 I was willing to obey the law of the country, so that's why I
23 came here.

24 Q Did you think at any time the fact that you testified
25 in this case that you were being used by the government to oppress

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1 Silva - cross

2 THE COURT: Sustained.

3 Mr. Silva, did you know anything about the
4 defendants in this case before the episode in question?

5 THE WITNESS: The three?

6 THE COURT: Yes.

7 THE WITNESS: I didn't know them.

8 THE COURT: Objection sustained.

9 Q Do you see any relationship between the three defendants
10 in this case and the black people in general in this country,
11 or do you see such an obvious difference, physical difference
12 in the three defendants in this case and other black people
13 that you have passed in the streets of this country?

14 A In the first case, this is the first time I have seen
15 a trial in the court, so I don't know anything about pertaining
16 to court procedure, so I'm really not sure what you're talking
17 about.

18 Q Do you recognize -- I'll withdraw that question.

19 Do you see any resemblance -- not geographically, I'm
20 speaking about physical, cultural resemblance -- do you see
21 any resemblance between yourself and three defendants in this
22 case?

23 A Of course, I do.

24 Q Do you see any resemblance between the three defendants
25 in this case and people fighting for liberation in Africa?

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1 Silva - cross

2 MR. DOW: Objection.

3 THE COURT: Sustained. We have had a considerable
4 amount of leeway here, Mr. Simmons. We have gone way
5 beyond the proper bounds of cross examination. If
6 there is any other specific fact about what he saw
7 that day that you want to develop, you can, but other
8 than that, we have had enough cross examination of this
9 witness.

10 Q You so mentioned that on May 3rd, 1974, you was taken
11 at police headquarters in New Haven, is that correct?

12 A Yes.

13 Q And during the time that you was at the police
14 headquarters in New Haven, you gave a statement to the police?

15 A Yes, to the best of my knowledge.

16 Q Was you asked to give a description of the two people
17 who were in the house with you?

18 A Yes, I was told to give the description of them.

19 Q Did you give a full description of the people that
20 were in the house with you before you saw them in the precinct?

21 A Pardon?

22 Q In other words, before you gave a full description
23 concerning the height, weight and physical make-up, complexion,
24 whether they were light, dark or what not, hair style, did you
25 give all this information to the police before you saw the two

1 Silva - cross

2 people in the police headquarters?

3 A Yes, I gave this information before I was allowed
4 to see them again.

5 Q See them again?

6 A Right. There was a point whereby I got lost in
7 my description, that I was taken to see them, you know.

8 Q You got lost in your description?

9 A Right. I told I was too -- I'm very poor in describing
10 people, so as soon as there was a -- were a series of questions
11 and I gave a description, and I was asked those questions, and
12 I was taken to see them to -- I found my description.

13 Q You was taken to the suspects in order to view them
14 so that you could get a better election, a better recollection
15 of your description of them, is that correct?

16 A Yes.

17 Q So as a result of your viewing the suspects in
18 order to get a better recollection of their description, this
19 aided you tremendously in your ability to identify them, is
20 that correct?

21 A The point we were together for a short time, and I never
22 met them in my life before, I couldn't give the full description
23 of the suspects, really.

24 Q So you wasn't really able to give a full description --

25 A Right, because they were there for a short time.

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750 MAIN STREET
HARTFORD, CONNECTICUT

205 CHURCH STREET
NEW HAVEN, CONNECTICUT

Silva - cross

Q You wasn't in the presence of these individuals for about 45 minutes or an hour, is that correct?

A Yes.

Q Do you think that if you had viewed these individuals' face for about ten seconds, just ten seconds, that you would have been able to identify them?

MR. DOW: Objection.

THE COURT: Sustained.

Q Isn't that impossible to identify a person just viewing his face for only ten seconds?

DEFENDANT SIMMONS: Mr. Simmons, let's be careful.

The question was asked, there was an objection and it was sustained, and you may not put the same question again.

Q You was first person that descended the stairs from the house on George Street, is that correct?

A Yes.

Q And before you descended those stairs, was you given any instructions by the people who was in the house with you?

MR. DOW: Objection, hearsay.

THE COURT: Overruled.

A We were coming down?

Q Just before you came down the stairs, was you given any instructions --

1 Silva - cross

2 A They said I had to lead first, and they told the cops
3 that I'm coming and I was to be the first man, you know, I was --

4 Q They informed the police officers --

5 A That I'm leading the group.

6 Q Did they give you anything before you left the house?

7 A I was given a wallet.

8 Q You was given a wallet?

9 A Yes, a wallet.

10 Q What happened to that wallet?

11 A He said -- I got it from him, and he said I should take
12 it, and so I got it, so my intention was to hold it -- to hold
13 the wallet for him, so I had an opportunity of giving the
14 wallet back, but he gave me the wallet and there was no
15 opportunity of giving it back, so the policeman got the wallet
16 when we got downstairs.

17 Q The policeman took the wallet from you?

18 A From me, they got it from me.

19 Q Did the policeman ever give you that wallet back?

20 A Later on when I was at the police station, they made
21 a call whether I was the owner of the wallet, and I said no, it
22 belongs to one of the gentlemen who were with me.

23 Q Before they took the wallet from you, did they ask you
24 was it your wallet?

25 A The policeman?

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750 MAIN STREET
HARTFORD, CONNECTICUT

295 CHURCH STREET
NEW HAVEN, CONNECTICUT

Silva - cross

Q Yes, I mean the --

A The policeman, you mean?

Q Did the policeman first take the wallet away without a comment?

A They took the wallet and kept it in the room, in the sitting room. The point I was searched, and when I got down from the upstairs, they searched me and got the wallet, they found the wallet with me and they kept it in the room. You know what I mean? They left the wallet in the sitting room, so they thought I was the owner of the wallet, at first. So not until I confessed that the wallet wasn't mine, it was one of the -- it belongs to one of the suspects.

Q And you mentioned that people who was in the house with you informed the policeman when they were coming down that you would be coming down first?

A First, right, yes.

Q Did you ever have an opportunity to see the content of that wallet that was taken from you?

A No, I didn't.

Q Did you think that you knew the content of that particular wallet?

A No. What really made me to get the wallet was that I might have an opportunity of giving the wallet back to him, since in this case they were allowed to strip naked and there was

1 Silva - cross

2 anything there, so the only thing I could do was to get the
3 wallet and give the wallet back when I got the opportunity, so
4 since there was no opportunity and I was searched, they took
5 the wallet from me.

6 Q Did you think at any time that the wallet contained
7 personal money of the person, and he was given it to you because
8 he knew it would have been confiscated by the police?

9 MR. DOW: Objection.

10 A I don't know.

11 THE COURT: Sustained.

12 Q The only time the police was shooting in the direction
13 of the house, did you look out of the window or did you have
14 an occasion to look out of the window?

15 A I had no occasion of looking out of the window. I
16 was so scared and I had to open --

17 Q Do you have knowledge -- I'll withdraw that question.
18 Do you have any knowledge of the African Nigeria
19 struggle in Africa?

20 THE COURT: That's clearly in flat contradiction
21 of the ruling I made. I told you that the only further
22 inquiry would be on the events of May 3rd. You are
23 way beyond that with this question, and so your
24 examination is at an end.

25 Is there any redirect of this witness?

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1 Silva - cross

2 MR. DOW: There is --

3 DEFENDANT SIMMONS: You can't do redirect until
4 I finish my examination. I can't examine him --

5 THE COURT: Mr. Simmons, we are not going to
6 have a --

7 DEFENDANT SIMMONS: I'm going to shout and I'm
8 going to scream and everything else until you allow
9 me to finish cross examining this witness.

10 THE COURT: If you don't take your seat instantly --

11 DEFENDANT SIMMONS: I'll take my seat -- like I
12 told you before, I'll take the seat because the marshals
13 have guns and the marshal with the automatic weapon
14 up in the balcony and reinforcement outside, that's
15 the only reason I'm taking my seat, because I am
16 unarmed.

17 THE COURT: Your right to represent yourself
18 will end, if you don't sit down and be quiet instantly.

19 DEFENDANT SIMMONS: I say again that the only way
20 that he is going to --

21 THE COURT: You have just lost your right to
22 represent yourself, Mr. Simmons.

23 DEFENDANT SIMMONS: I'm tired, I'm sick and tired
24 of playing your chess game for lynching. I'm sick and
25 tired, so you might as well take that divine robe that

1 Silva - cross

2 you have and stick it up the best place -- that you
3 know that you can stick --

4 THE COURT: You will lose your right to remain
5 in the courtroom if you don't stop.

6 DEFENDANT SIMMONS: Allow me to finish cross
7 examining this witness, I'm trying to bring out from
8 this witness -- you want to use --

9 THE COURT: If you don't be quiet, you will be
10 removed from the courtroom.

11 DEFENDANT SIMMONS: It don't make no difference
12 if I be removed from the courtroom, I want you to
13 understand one thing, I'm going to defend myself, I
14 want you to understand that, I want you to think --

15 THE COURT: I will give you one more warning.
16 If you don't stop shouting, you will be removed from
17 the courtroom.

18 DEFENDANT SIMMONS: All right, just order me to
19 be removed from the courtroom.

20 THE COURT: Are you able to contain yourself now?

21 DEFENDANT SIMMONS: I'm able to walk out of the
22 courtroom if you want me removed. I'm able to walk
23 out of the courtroom.

24 THE COURT: Is there any redirect?

25 MR. DOW: There is redirect.

1
2 Silva - cross

3 DEFENDANT SIMMONS: No, no, no, no, no, no.

4 THE COURT: Marshal, please excuse Mr. Simmons
5 from the courtroom.

6 A VOICE: Right on, brother.

7 THE COURT: The young lady who just demonstrated,
8 would the marshal please obtain her name?

9 DEFENDANT ALSTON: Don't --

10 THE COURT: Marshal, please get -- please ask
11 the young lady her name.

12 DEFENDANT HASKINS: Get that marshal, hear.
13 Crew-cut mad dog.

14 THE COURT: You can excuse her from the courtroom,
15 but please ask her name.

16 DEFENDANT HASKINS: Let her go.

17 THE COURT: Mr. Haskins, if you can't control
18 yourself, you will be removed.

19 DEFENDANT HASKINS: Grab me, fat boy.

20 DEFENDANT ALSTON: You check him out, too.

21 DEFENDANT HASKINS: You gave these boys an order.
22 You know these boys can't think for themselves. You
23 don't tell them to be grabbing young ladies like that,
24 he's a mad dog, he's liable to hurt that young lady.

25 THE COURT: If you don't sit down and keep quiet,
you will be removed from the courtroom, as well.

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HARTFORD, CONNECTICUT

205 CHURCH STREET
NEW HAVEN, CONNECTICUT

1 Silva - cross/redirect

2 Please sit down or else you will be removed. Make
3 up your mind right now what you're going to do.

4 Sit down so we can resume.

5 DEFENDANT HASKINS: Just take it easy.

6 DEFENDANT ALSTON: Stop provoking --

7 DEFENDANT HASKINS: Just take it easy.

8 THE COURT: If you do not sit down and be quiet,
9 you will be removed.

10 DEFENDANT HASKINS: You got them.

11 THE COURT: Sit down.

12 Any redirect of this witness?

13 MR. DOW: A few questions.

14 (Defendant Simmons was removed from courtroom.)

13 MR. WILLIAMS: It was my intention to say precisely what
14 I will say now, which is very simple, that I move for a
15 mistrial and severance of the defendants because I believe that
16 my client has been hopelessly prejudiced by what transpired in
17 the courtroom during the time that the jury was here just before
18 our midafternoon recess.

19 THE COURT: Motion for mistrial is denied. The motion
20 for severance is denied.

21 MR. ROSEN: On behalf of my client, I make the same
22 motion for the same reasons.

23 THE COURT: All right. The motions in Mr. Alston's
24 case for mistrial and for severance are denied.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
:
VS. : CRIMINAL NO. N 74-65
:
HAROLD SIMMONS, JAMES :
HASKINS, MICHAEL ALSTON :
and TIMOTHY ADAMS :

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT ONE

On or about May 3, 1974, at New Haven in the District of Connecticut, HAROLD SIMMONS, JAMES HASKINS, MICHAEL ALSTON and TIMOTHY ADAMS, the defendants herein, did by force and violence and by intimidation take from the person and presence of another, money belonging to and in the care, custody, control, management and possession of the New Haven Savings Bank, Westville Branch, the deposits of which were then insured by the Federal Deposit Insurance Corporation, in violation of 18 U.S.C. §2113(a) and 18 U.S.C. §2(a) and §2(b).

COUNT TWO

On or about May 3, 1974, at New Haven in the District of Connecticut, HAROLD SIMMONS, JAMES HASKINS, MICHAEL ALSTON and TIMOTHY ADAMS, the defendants herein, did take and carry away, with intent to steal, money in excess of \$100.00 belonging to and in the care, custody,

control, management, and possession of the New Haven Savings Bank, Westville Branch, the deposits of which were then insured by the Federal Deposit Insurance Corporation, in violation of 18 U.S.C. §2113(b) and 18 U.S.C. §2(a) and §2(b).

COUNT THREE

On or about May 3, 1974, at New Haven in the District of Connecticut, HAROLD SIMMONS, JAMES HASKINS, MICHAEL ALSTON and TIMOTHY ADAMS, the defendants herein, did by force, violence and intimidation take from the person and presence of another, money belonging to and in the care, custody, control, management and possession of the New Haven Savings Bank, Westville Branch, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and the defendants, HAROLD SIMMONS, JAMES HASKINS, MICHAEL ALSTON and TIMOTHY ADAMS, in committing the aforesaid acts, did assault and put in jeopardy the lives of others by the use of dangerous weapons, that is, guns, in violation of 18 U.S.C. §2113(d) and 18 U.S.C. §2(a) and §2(b).

COUNT FOUR

On or about May 3, 1974, at New Haven in the District of Connecticut, HAROLD SIMMONS, JAMES HASKINS, MICHAEL ALSTON and TIMOTHY ADAMS, the defendants herein,

did wilfully and knowingly combine, conspire, confederate and agree with each other and with others unknown to the grand jury, to commit an offense against the United States, that is, to take by force, violence and intimidation from the person of another money belonging to and in the care, custody, control, management and possession of the New Haven Savings Bank, whose assets were insured by the Federal Deposit Insurance Corporation, in violation of 18 U.S.C. §2113(a), all in violation of 18 U.S.C. §371.

OVERT ACT

In furtherance of the conspiracy and to effect the objects thereof, the defendants performed the following overt act:

1. On or about May 3, 1974, the defendants approached and entered the New Haven Savings Bank, Westville Branch.

A TRUE BILL

FOREMAN

STEWART H. JONES
UNITED STATES ATTORNEY

BARRY J. CUTLER
ASSISTANT UNITED STATES ATTORNEY

AFTERNOON SESSION

1
2 THE COURT: Ladies and gentlemen, you have heard all the
3 evidence in the case, and you have heard the summations by all
4 sides. Now, it is my responsibility to give you what is called
5 a charge or the instructions of law which apply to this case.

6 It is exclusively the function of the Court to set
7 forth the rules of law which govern a case, and to instruct as
8 to the application of those rules. On these legal matters,
9 these questions of law, you are to take the law as I give it
10 to you, and you are not at liberty to do otherwise.

11 On the other hand, you members of the jury are the
12 exclusive judges of the facts of the case.

13 It is your duty to find the facts. You are to
14 recollect and weigh the testimony, draw your own conclusion as to
15 what the ultimate facts are, but you may not go outside the
16 evidence to find the facts, nor resort to guesswork or conjecture,
17 nor suspicion.

18 The government in this case is to be considered in
19 no different light than any other party to a lawsuit. Counsel
20 for the government must be considered in no different light than
21 counsel for defendants. The fact that the government is a party
22 entitles it to no greater consideration or less consideration
23 than that accorded to any other party in the litigation.

24 So your task is to apply the law as I will endeavor
25 to explain it to you, to the facts of the case as you find the

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1 facts to be, and in that way render your verdicts.

2 In general, there are two types of evidence that you
3 may consider. One is direct evidence: that is, the evidence of
4 testimony of an eyewitness; and the other is circumstantial
5 evidence - the proof of a chain of circumstances from which
6 some other fact may be inferred.

7 Circumstantial evidence may be received and is
8 entitled to such consideration as you find it deserves, depending
9 upon the inferences you think it necessary and reasonable to draw.
10 No greater degree of certainty is required when the evidence is
11 circumstantial than when it is direct, for in either case, you
12 must be convinced beyond a reasonable doubt of the guilt
13 of a defendant before you are entitled to find the defendant
14 guilty. Circumstantial evidence consists of facts proved from
15 which the jury may infer by their reasoning other facts sought
16 to be established as true.

17 Different inferences may be drawn from the facts in the
18 case, whether proved by direct or circumstantial evidence. It is
19 for you to decide which common sense inferences you will draw from
20 the facts that you find established. If all the circumstances
21 taken together are consistent with any reasonable hypothesis,
22 which includes the innocence of a defendant, the government has
23 not proved his guilt beyond a reasonable doubt, and you must
24 acquit him. On the other hand, if you find that all of the
25 circumstances established by the evidence taken together satisfy

1 you beyond a reasonable doubt of the guilt of the defendant,
2 in accordance with these instructions, then it is your duty to
3 find him guilty.

4 Now, if during this trial an objection was made to
5 testimony of a witness, and the Court sustained the objection and
6 ordered testimony stricken, then you are to disregard entirely
7 that stricken testimony. Such rulings, and, in fact, any
8 rulings of the Court in the course of a trial, are not to be
9 taken as indicating the Court's belief one way or the other in the
10 guilt or innocence of a defendant, nor of the truth or falsity
11 or significance of any of the testimony involved.

12 If during the course of the trial objection was made
13 by counsel for either side, such objection was sustained or
14 overruled, you are not to regard that as having any bearing
15 on either side. The making of an objection by counsel
16 representing a party should be in no way taken by you against
17 that party.

18 Now, as I mentioned to you, the summations that you
19 heard are not evidence. What is evidence is what you heard from
20 the witnesses and the exhibits you will have, and it is your
21 own recollection of that testimony that is to govern, not what
22 counsel may have said about it that differs from your recollection,
23 and not what I may say about it, if that should differ from
24 your recollection. You heard the testimony, and you will be the
25 judges of the facts.

1 In this case, as in any criminal prosecution, each
2 defendant is presumed to be innocent until proven guilty beyond
3 a reasonable doubt. This presumption of innocence was with
4 each defendant when he was first presented for trial in this
5 case. It continues with him throughout the trial. As far as
6 you are concerned, each is innocent and continues innocent unless
7 and until such time as all the evidence produced in the trial,
8 considered in the light of these instructions of law, satisfies
9 you beyond a reasonable doubt that the defendant whose case you
10 are considering is guilty.

11 The burden of proving each of the defendants guilty
12 of the crimes with which he is charged rests upon the government.
13 The defendants do not have to prove their innocence. This
14 means that before you may find the defendant guilty of any
15 count, the government must prove to you beyond a reasonable
16 doubt every element necessary to constitute the crime charged.
17 Whether that burden of proof has been sustained depends not on
18 the number of witnesses, nor on the quantity of testimony, but
19 on the nature and quality of testimony.

20 A reasonable doubt means a doubt founded upon reason.
21 As the words imply, it's a doubt as will be entertained by a
22 reasonable person after all the evidence in the case is analyzed,
23 compared and weighed. A reasonable doubt may arise not only
24 from evidence presented, but also from a lack of evidence.

25 Since the burden is upon the government to prove a

1 defendant guilty beyond a reasonable doubt of each element of
2 the crime charged, a defendant has the right to rely upon a
3 failure of the prosecution to establish such proof. However,
4 absolute or mathematical certainty is not required, but there
5 must be such certainty as satisfies your reason and judgment,
6 and such that you feel conscientiously bound to act upon.
7 Reasonable doubt is not a fanciful doubt, nor whimsical or
8 capricious doubt, for anything relating to human affairs and
9 depending upon human testimony is open to some possible or
10 imaginary doubt. Reasonable doubt is such as would cause a
11 prudent person to hesitate before acting in matters of importance
12 to himself or herself. So if the evidence warrants, in your
13 judgment, the conclusion that a defendant is guilty so as to
14 exclude every other reasonable conclusion, you should declare
15 him to be guilty. On the other hand, if on all the evidence
16 you have a reasonable doubt as to the guilt of the defendant,
17 you should find that defendant not guilty.

18 This case involves criminal charges brought against
19 three defendants: Harold Simmons, James Haskins and Michael
20 Alston. The charges of violating federal law are set forth in
21 an indictment which bears the number N-74-65.

22 I will discuss the allegations in just a moment. First,
23 let me point out the function of an indictment. An indictment
24 by a grand jury is simply the formal method of accusing a
25 defendant of certain crimes. It defines the crimes charged and

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1 the manner of their alleged accomplishment. The indictment is
2 without bearing or significance in your consideration of the case,
3 and it is to be accorded no weight in determining the guilt or
4 innocence of any of the defendants. By their pleas of not guilty,
5 the defendants have denied every allegation set forth in the
6 indictment.

7 The defendants are charged in a three-count indictment
8 with three separate violations of federal law. Before taking
9 up the specific crimes charged in detail, I want to summarize
10 briefly these three crimes and their relation to each other.
11 This will perhaps assist you in grasping the overall accusation
12 and then understand the details of each crime as I take them up
13 one by one.

14 The defendants are accused, in Count One, of unlawfully
15 taking, by force or violence, or by intimidation, some money
16 from the bank; in Count Two, of taking from a bank, with intent
17 to steal, money in excess of \$100; this Count does not include
18 force and violence, or intimidation, but simply taking from a
19 bank, with intent to steal, money in excess of \$100; in Count
20 Three, while taking money from a bank, of putting in jeopardy
21 the life of another person.

22 Since each count charges each defendant with a separate
23 crime, you must consider the essential elements of each count
24 separately and return a verdict on each count of either not
25 guilty or guilty.

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1 As I have instructed you at the outset and during the
2 trial, you must consider the case against each defendant
3 separately from the case against the other defendants. Your
4 verdict on any one count with respect to one defendant should
5 not influence your verdict on that count or any other count with
6 respect to the other defendants. As to any one defendant, your
7 verdict on one count should not influence your verdict on the
8 other counts.

9 These three crimes, that I will explain in detail,
10 are the only ones with which you should be concerned. There
11 was some reference earlier in these proceedings to a charge of
12 conspiracy, but that charge is not before you and you should
13 not give any consideration to it.

14 There has also been testimony of events that occurred
15 outside the bank, such as injury to the police officers. You are
16 entitled to consider that evidence in determining the issues in
17 this case, but whether that evidence or any other evidence
18 involves any other violation of law beyond what is charged in
19 the indictment is not a matter for you to consider. The only
20 violations of law you are to consider are the three set forth
21 in this indictment.

22 Before turning to the statutes defining the crimes, let
23 me just mention that later on in this charge I will instruct you
24 concerning a special rule that applies where more than one person
25 participates in the commission of a crime. This special rule

1 concerns those circumstances under which the actions of one
2 person may be attributed to another person. I will explain that
3 shortly in more detail. Let me now return to the statutes
4 defining the crimes.

5 Federal law makes it a crime to take, by force and
6 violence, or by intimidation, from the person or presence of
7 another, money belonging to, or in the custody of, a bank,
8 the deposits of which are insured by the Federal Deposit
9 Insurance Corporation.

10 The statute reads as follows:

11 "Whoever, by force and violence, or by
12 intimidation, takes . . . from the person or
13 presence of another . . . money . . . belonging
14 to, or in the care, custody, control, management,
15 or possession of, any bank . . ." shall be punished.
16 In Count One of the Indictment, the Grand Jury charges:

17 "On or about May 3, 1974, at New Haven in the
18 District of Connecticut, HAROLD SIMMONS, JAMES HASKINS
19 and MICHAEL ALSTON, the defendants herein, did by
20 force and violence and by intimidation take from the
21 person and presence of another, money belonging to and
22 in the care, custody, control, management and
23 possession of the New Haven Savings Bank, Westville
24 Branch, the deposits of which were then insured by
25 the Federal Deposit Insurance Corporation."

1 There are six essential elements of the crime charged
2 in Count One of the Indictment, each of which the government has
3 the burden of proving beyond a reasonable doubt before there can
4 be a conviction. If you find that the government has not
5 sustained this burden with regard to any element as to any
6 defendant, then that defendant must be acquitted of the crime
7 charged in this count of the Indictment.

8 The six essential elements are:

- 9 (1) That the defendant actually was present in the
10 New Haven Savings Bank, Westville Branch, on May 3rd,
11 1974.
- 12 (2) That the defendant, at that bank on that date,
13 took money from the person or in the presence of
14 another.
- 15 (3) That the defendant, at the bank on that day,
16 took such money by force and violence, or by
17 intimidation.
- 18 (4) That such money belonged to, or was in the care,
19 custody, control, management or possession of that
20 bank on that day.
- 21 (5) That the deposits, of the bank on that day, were
22 insured by the Federal Deposit Insurance Corporation.
- 23 (6) That the defendant, in taking money from the person
24 or presence of another by force and violence or by
25 intimidation, at the bank on that day, acted willfully

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1 and with specific intent.

2 Let me explain some of the terms that I just used in
3 detailing those elements.

4 By "force and violence" is meant the use of actual
5 physical pressure or constraint. It means such a display of
6 physical prowess as is calculated to inspire fear of physical
7 harm to anyone opposing the will of the person exerting the
8 force. But "force and violence" does not necessarily mean
9 actual physical contact, although that may be involved. Any
10 conduct that is intended to cause bodily fear or terror is
11 sufficient to constitute "force and violence" as used in the
12 statute.

13 "Intimidation" has a somewhat, although not entirely,
14 different meaning. Intimidation is sometimes called "constructive
15 force". In general, it means to put in fear or to inspire with
16 fear. This fear may be inspired without physical violence or
17 even spoken threats. It may be accomplished merely by a
18 menacing attitude and a display of force. Threats by word or by
19 gesture may constitute intimidation, if the effect of such words
20 or gestures is to put in fear of physical harm the person towards
21 whom they are directed. This putting in fear must arise from
22 the conduct of the defendant, rather than the timidity of the
23 person in whose presence or from whom money is taken. On the
24 other hand, this fear need not be so great as to result in terror
25 or panic or hysteria. In this connection, it is reasonable to

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1 infer that confrontation with a dangerous weapon will place
2 the person so confronted in sufficient fear to constitute
3 intimidation as used in the statute. There need be no direct
4 proof of actual fear, the fear may be inferred where there is
5 just cause in the evidence for inferring it.

6 It should be emphasized that it is not necessary for
7 you to find that the taking was accomplished by both force and
8 violence and intimidation. The taking of money by either force
9 and violence or intimidation is sufficient to comply with the
10 requirements of the statute.

11 Money is in the care, custody, control of a bank if it
12 is part of the cash with which the bank handles its normal
13 banking operations, such as the money tellers use to make change,
14 cash checks or pay out to depositors.

15 The term "bank" as used in this Section and in each
16 of the other Sections of the Statute I will mention, includes
17 "any bank, the deposits of which are insured by the Federal
18 Deposit Insurance Corporation."

19 As to the last element of the offense, the act must
20 have been done willfully and with specific intent. An act is
21 willful if it is done voluntarily and purposely with a specific
22 intent to do that which the law forbids. Mere laxity, inadvertence,
23 carelessness, negligence, or even gross negligence, would not
24 be enough to show willfulness. Proof of specific intent is
25 required before there can be a conviction on this count.

1 Specific intent, as the term suggests, means more than a
2 general intent to commit an act. A person acts with specific
3 intent who knowingly does what the law forbids, purposely
4 intending to violate the law, or recklessly disregarding the law.

5 You must decide whether the government has proven
6 beyond a reasonable doubt that each defendant acted willfully and
7 with specific intent to steal money from the bank.

8 If the government has failed to sustain its burden of
9 proof on this or any other element of Count One, you should
10 return a verdict of not guilty as to Count One. On the other
11 hand, if you find that the government has sustained its burden
12 of proving beyond a reasonable doubt each of the essential
13 elements of the crime charged in Count One, then you should
14 return a verdict of guilty on Count One.

15 As to Count Two, the federal law makes it a crime
16 to take away, with intent to steal, money exceeding \$100, belong-
17 ing to, or in the custody of a bank, the deposits of which are
18 insured by the Federal Deposit Insurance Corporation.

19 The statute reads as follows:

20 "Whoever takes and carries away, with intent to
21 steal . . . money . . . of value exceeding \$100
22 belonging to, or in the care, custody, control,
23 management, or possession of any bank . . . shall be
24 . . ." punished.

25 In Count Two of the Indictment, the Grand Jury charges

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1 as follows:

2 "On or about May 3, 1974, at New Haven in the
3 District of Connecticut, HAROLD SIMMONS, JAMES HASKINS
4 and MICHAEL ALSTON, the defendants herein, did take
5 and carry away, with intent to steal, money in excess
6 of \$100 belonging to and in the care, custody,
7 control, management, and possession of the New Haven
8 Savings Bank, Westville Branch, the deposits of which
9 were then insured by the Federal Deposit Insurance
10 Corporation."

11 There are five essential elements of the crime
12 charged in Count Two of the Indictment, each of which the
13 government has the burden of proving beyond a reasonable doubt.

14 The five elements are:

- 15 (1) That the defendants actually were present in the
16 New Haven Savings Bank, Westville Branch, on May 3,
17 1974.
- 18 (2) That the defendants took and carried away from
19 that bank on that date money in excess of \$100.
- 20 (3) That such money belonged to or was in the care
21 or custody or control, management and possession of the
22 bank on that day.
- 23 (4) That the deposits of the bank were then insured
24 by the Federal Deposit Insurance Corporation.
- 25 (5) That the defendants, in taking and carrying away

1 money in excess of \$100 from the bank on that date,
2 acted willfully and with intent to steal.

3 If you do not find beyond a reasonable doubt that each
4 of these elements has been established with respect to a defendant,
5 then your verdict should be not guilty on Count Two. On the other
6 hand, if you do find beyond a reasonable doubt that all of these
7 elements have been established with respect to a defendant, then
8 you should return a verdict of guilty on Count Two as to that
9 defendant.

10 As to Count Three, federal law makes it a crime,
11 while committing the offense charged in Count One, to put in
12 jeopardy the life of a person by the use of a dangerous weapon.

13 The statute reads as follows:

14 "Whoever, in committing . . . any offense defined
15 in subsection (a) . . . of this section . . . puts in
16 jeopardy the life of any person by the use of a
17 dangerous weapon . . . shall be . . ." punished.

18 Count Three reads as follows:

19 "On or about May 3, 1974, at New Haven in the
20 District of Connecticut, HAROLD SIMMONS, JAMES HASKINS
21 and MICHAEL ALSTON, the defendants herein, did by
22 force, violence and intimidation take from the person
23 and presence of another, money belonging to and in the
24 care, custody, control, management and possession of
25 the New Haven Savings Bank, Westville Branch, the

1 deposits of which were then insured by the Federal
2 Deposit Insurance Corporation, and the defendants,
3 HAROLD SIMMONS, JAMES HASKINS and MICHAEL ALSTON, in
4 committing the aforesaid acts, did assault and put in
5 jeopardy the lives of others by the use of dangerous
6 weapons: that is, guns, in violation of the statute."

7 Perhaps I should point out that in reading the
8 charge in the indictment, you will notice that sometimes the word
9 is "and" and in explaining the elements I have used the word "or".
10 The indictment charges different ways of accomplishing a crime.
11 As I have indicated to you, in some instances, one or the other
12 of a particular way is sufficient, for example, in Count One,
13 I refer to the fact that one element was that there must either
14 be force and violence or intimidation.

15 Now, although the indictment says "and", if you find,
16 as I explained to you, either one, that is sufficient.

17 Similarly, with the money, the indictment refers to
18 money belonging to and in the care, custody, control, et cetera,
19 and as I explained to you, the element that you must find before
20 there can be a conviction is that the money either belonged to
21 the bank or was in the bank's care, custody or control, et cetera.

22 With respect to Count Three, there are three essential
23 elements of this crime, each of which the government has the
24 burden of proving beyond a reasonable doubt before there can be
25 a conviction:

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1 (1) That the defendant did commit the offense
2 charged in Count One of the Indictment.

3 (2) That in committing the offense charged in Count
4 One, the defendant jeopardized the life of a person
5 in the bank by use of a dangerous weapon.

6 (3) That the defendant, in jeopardizing the life of
7 a person in the bank by use of a dangerous weapon,
8 acted willfully and with specific intent.

9 Obviously, before you may find a defendant guilty on
10 Count Three, you must have found him guilty on Count One. If
11 you have found a defendant guilty on Count One, you can then
12 proceed to consider the evidence as to Count Three. If, however,
13 you have found the defendant not guilty of Count One, then you
14 should not even consider Count Three as to that defendant.

15 To "put in jeopardy the life" of a person by the
16 use of a dangerous weapon means to expose such person to risk
17 of death by the use of a dangerous weapon. Risk of death is to
18 be determined objectively, not subjectively. In other words,
19 with respect to this element of Count Three, the issue is whether
20 the lives of persons in the bank were, in fact, endangered, not
21 merely whether any of them thought their lives were in danger.
22 This element is different than the element of intimidation
23 that I mentioned in connection with Count One.

24 To establish that element in Count One, all that need
25 be shown is that a bank employee feared violence or death. But

1 to establish, for purposes of Count Three, that a life was in
2 jeopardy, the evidence must show beyond a reasonable doubt that
3 life actually was in danger.

4 Then, you may infer from all the evidence that the
5 lives of persons in the bank actually were in jeopardy. You
6 would be entitled to reach this conclusion if you find that a
7 loaded shotgun or a loaded pistol was being pointed at them.

8 In considering whether the guns alleged to have been
9 used by the robbers were loaded, you may consider all the
10 circumstances alleged to have occurred during and immediately
11 after the robbery, including what the robbers are alleged to have
12 said to the people in the bank.

13 If you do not find beyond a reasonable doubt that each
14 of these elements has been established, your verdict should be
15 not guilty on Count Three. On the other hand, if you do find
16 beyond a reasonable doubt that all of these elements have been
17 established, then you should return a verdict of guilty on
18 Count Three.

19 Now, in considering whether these elements have been
20 established, you should bear in mind the special rule that I
21 mentioned earlier. This rule arises from the fact, if you find
22 it to be a fact, that more than one person committed the robbery.
23 The government offered evidence to establish that the robbery was
24 committed by three or four men, and, of course, their claim is
25 that three of the men are the defendants on trial now. Now, there

1 was an element in each of the three crimes with which each
2 defendant is charged that required a participant in the robbery
3 to do something. In Count One, he had to take money by
4 force and violence or by intimidation. In Count Two, he had to
5 take from the bank money in excess of \$100. In Count Three, he
6 had to jeopardize the life of a person in the bank by use of a
7 dangerous weapon.

8 I charge you that the government does not have to
9 prove that each defendant individually took these actions. If
10 you find beyond a reasonable doubt that a defendant was one of the
11 participants in the robbery: that is, was actually in the bank
12 and participated in the robbery, and if you further find beyond
13 a reasonable doubt that the robbers were all engaged in a joint
14 venture, the object of which was to rob the bank, then you may
15 find that the actions of any one of them in the bank may be
16 attributed to the other two, and each of them may be found to have
17 done what any one has done; for example, if you find that one
18 of the robbers jeopardized the lives of persons in the bank with
19 a dangerous weapon, and you find that one of the defendants was
20 participating with that robbery in a joint venture to rob the
21 bank, then you may conclude that the defendant jeopardized the
22 lives of a person in the bank with a dangerous weapon, whether
23 or not the defendant was the one who actually pointed a weapon
24 at that person. This rule, of course, does not alter what I
25 have previously told you, that before you may find a defendant

1 guilty on any count, you must be satisfied beyond a reasonable
2 doubt that all the elements of the crime charged in that count
3 have been established.
4

5 Obviously, a central issue in each case is whether or
6 not the defendant whose case you are considering was a participant
7 in the robbery. The burden of proof is on the prosecution
8 with reference to every element of the crime charged, and this
9 burden includes the burden of proving beyond a reasonable doubt
10 the identity of the defendant as a perpetrator of the crimes
11 charged. Now, the government relies, in part, on testimony of
12 witnesses in the bank and other witnesses at various locations
13 in New Haven before and after the robbery who say they recognized
14 one or more of the defendants.

15 All eyewitness testimony, whether the witness is
16 identifying a defendant or a photograph, should be scrutinized with
17 care and caution. This is especially true of witnesses in a
18 bank whose opportunity for observation is limited and who
19 observed the robbers under conditions of extreme stress.
20 Eyewitness testimony is often unreliable. Then a witness
21 identifies a photograph, before he identifies the person in the
22 flesh, an added risk is injected. Even if the police follow the
23 most correct photographic identification procedures and show
24 pictures of a number of individuals without indicating whom
25 they suspect, there is a danger that a witness may make an
incorrect identification, and there is the further danger that a

1 witness may retain in his mind's eye the image from the
2 photograph rather than the image of the person that he saw
3 committing the crime. This is not to say that you may not
4 believe eyewitness identification testimony, but before you
5 believe such testimony, you must carefully weigh the witness'
6 ability to observe, the circumstances under which the observa-
7 tion was made, the consistency of the identification with any
8 other identifications in the case, and the ability of other
9 witnesses in relatively the same position to make the same
10 identification.

11 In the case, the defendants presented evidence to show
12 what was in their minds, what their intent was, and I want to
13 instruct you now as to the purposes for which that evidence, if
14 you accept it, may be considered, and the purposes for which
15 it may not be considered. This involves a distinction between
16 what is called an intent and what is called motive.

17 As I have previously mentioned, willfulness and specific
18 intent are elements of each of the crimes charged and must be
19 proved beyond a reasonable doubt. You are entitled to consider
20 all of the evidence in deciding whether a defendant was shown
21 beyond a reasonable doubt to have the requisite willfulness
22 and specific intent. Obviously, you cannot look into someone's
23 mind to determine what his intent is, but you are entitled to
24 infer from the evidence, from the surrounding facts and
25 circumstances, what a person's intent is. By "intent", I mean

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1 a determination of whether a defendant acted with a purpose of
2 doing something that the law forbids.

3 Each of the crimes charged in this indictment involves
4 the element of taking money belonging to or in the care, custody,
5 control or possession of the bank. To possess the intent
6 necessary for a conviction, a defendant must be shown to have
7 intended wrongfully to take money from the bank's custody or
8 possession. The defendants claim that they did not think the
9 money should be in the bank's possession, that they thought it
10 had been obtained by the bank to the detriment of others. Their
11 personal views of the bank's activities are not decisive. They
12 possessed the requisite intent if it's shown beyond a reasonable
13 doubt that they knew the money either belonged to the bank or
14 was in the care or custody or control or possession of the bank;
15 and if it is shown beyond a reasonable doubt that they acted
16 with the intention wrongfully of depriving the bank of money that
17 either belonged to the bank or was in the care or custody or
18 control or possession of the bank.

19 Motive is quite different. Motive is the reason why a
20 person decides to take a particular action. Sometimes motive is
21 relevant to an issue in the criminal case. It may be relevant
22 in determining the identity of a participant in a crime. However,
23 motive is not a defense to the crimes charged in this indictment.
24 A person who knowingly and intentionally commits an act that is
25 prohibited by the criminal law commits a crime, and he cannot

1 escape liability simply because he has what he or others may think
2 is a good reason for committing that crime.

3 Specifically, in this case, if you find that the
4 evidence establishes beyond a reasonable doubt all of the elements
5 necessary to establish a defendant's guilt of any of the crimes
6 charged in this indictment, then you should find the defendant who
7 you are considering guilty of that charge, and you may not find
8 him not guilty simply because there is evidence that he had what he or
9 others thought was a good reason or motive for committing the
10 crime.

11 In performing your function, one of the most important
12 things you have to do is pass on the credibility of witnesses:
13 that is, the "believability". In passing on credibility, there
14 are certain considerations you may want to keep in mind.
15 Consider the appearance which the witness made when he or she
16 was on the stand, try to "size him up." Did he appear to be telling
17 the truth? Did he appear to be honest? Did he appear to be
18 intelligent? Did he appear to be a person who could have observed
19 accurately what he is telling you, who would be likely to have
20 remembered it accurately and was capable of reporting it to
21 you accurately?

22 Another matter to bear in mind is whether the story
23 the witness told us was plausible. Does it ring true, or are
24 there inconsistencies in it? How does it fit in with the other
25 evidence which you believe has been established? Does it jibe

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1 with that evidence?

2 In this connection, you may also bear in mind if
3 you find that a witness has been deliberately falsifying on a
4 material point, you may take that fact into consideration in
5 determining whether he has falsified on other points. But
6 simply because you find that a witness has not repeated one fact
7 accurately doesn't necessarily follow he is wrong on other points.
8 A witness may be honestly mistaken on one point, and be entirely
9 accurate and correct on other points. A witness might even be
10 deliberately falsifying on one point and still be truthful on
11 other points, but if you find a witness has deliberately lied
12 on one material point, it's only natural you should be suspicious
13 of his testimony on other subjects, and under those circumstances,
14 you would be entitled to disbelieve all of that witness' testimony.

15 Whether you believe him or not lies in your own sound
16 judgment.

17 Another thing you may want to consider is whether
18 the witness you have considered has any bias or interest in the
19 outcome of the case, and if the witness has, whether he permitted
20 that interest or bias to color his testimony. Of course, it
21 doesn't follow simply from the fact that a witness does have a
22 bias or does have an interest in the outcome, that his testimony
23 is to be disbelieved. There are many people, no matter what their
24 interest in a case, would not testify falsely. On the other
25 hand, a jury should always bear in mind that if a witness has a

1 bias or interested in the outcome of the case, that bias or
2 interest offers something of a temptation to shade testimony,
3 whether that be to gain some advantage for himself or to do
4 damage to another. I may even be that bias or interest has so
5 operated on his mind that he has come to believe what he wants
6 to believe and, therefore, may testify falsely without
7 consciously realizing that his testimony is false.

8 So it should be obvious that if it should appear, as
9 regards any witness whose credibility you are testing, he had
10 a bias or interest in the case, that fact is the one you ought
11 to take into consideration as you weigh his testimony.

12 Now, police officers, law enforcement officers testified
13 in this case, and I will charge you that their testimony is to be
14 considered in no different light than the testimony of any other
15 witness. In general, in assessing credibility, bring to bear
16 on this issue the same considerations and use the same sound
17 judgment you apply to questions of truth and veracity that are
18 daily presenting themselves for your decision in the ordinary
19 affairs of your lives.

20 Now, in this case, there was testimony of a fingerprint
21 examiner. The rules of evidence ordinarily do not permit a
22 witness to give an opinion or a conclusion, but there is an
23 exception for what are called expert witnesses, witnesses who by
24 education and experience have some expertise in science or
25 profession or calling, may state an opinion and may give the

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1 reasons for their opinion.

2 You should consider each expert opinion received and
3 give it such weight as you think it deserves. If you decide
4 the opinion of the expert is not based on sufficient education
5 and experience, or if you conclude the reasons given in support
6 of the opinion are not sound, you may disregard the opinion, and
7 as with other testimony, give it such weight as you think it is
8 entitled to have.

9 A defendant who testifies is a competent witness, and
10 a defendant's testimony is to be judged in the same way and in
11 the light of the same considerations that apply to all other
12 witnesses.

13 Ladies and gentlemen, let me impress upon you that
14 you are duty-bound as jurors to apply the law to the facts of
15 this case, as you find those facts to be.

16 When you retire to the jury room, select one of your
17 number as a foreman or forelady, determine the facts on the
18 basis of the evidence, apply the law as I have outlined it to
19 you, and then render your verdicts fairly, uprightly and without
20 a scintilla of prejudice.

21 When you reach a verdict, it must be unanimous. It
22 is the duty of each juror to discuss and consider the opinions of
23 other jurors. Despite that, in the last analysis, it is your
24 individual duty to make up your own mind and to decide this case
25 on the basis of your own individual judgment and conscience.

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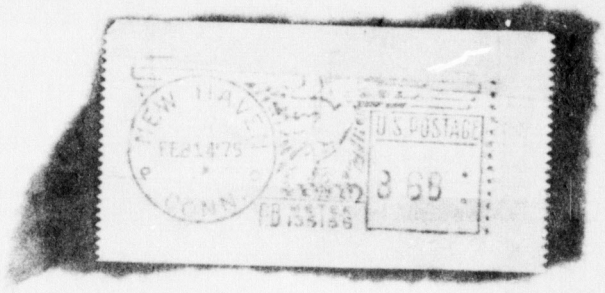
1 In just a moment, the jury may retire to the jury
2 room, proceed to your consideration of the case as soon as the
3 marshal brings the indictment and the exhibits to you.
4

5 I will ask you just to, when you are in the jury
6 room, wait a moment until you have those items with you before
7 you formally begin your deliberations.

8 When you have reached a verdict, inform the Clerk
9 through the Bailiff or Marshal, and then return to the courtroom
10 and announce your verdict.

11 At this time, the twelve members of the jury, but not
12 the two alternates, may be excused.

(Jury excused at 2:25 p.m.)



IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 74-2493

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

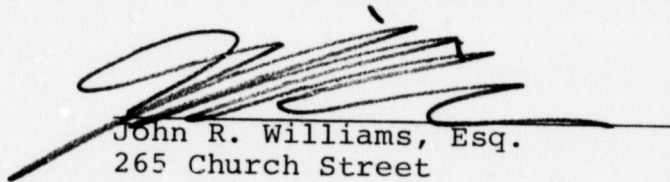
VS.

JAMES HASKINS

DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Brief and Appendix of the defendant-appellant James Haskins in the above matter was personally delivered to the office of the United States Attorney at New Haven, Connecticut.


John R. Williams, Esq.
265 Church Street
New Haven, Connecticut 06510